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**UNITED STATES BANKRUPTCY COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In Re:

FRANCIS J. LOPEZ,
 Alleged Debtor.

Case No. 05-05926-PBINV

Involuntary Chapter 7

**DECLARATION OF L. SCOTT KEEHN:
 (1) SUMMARIZING CURRENT STATUS,
 AND (2) RENEWING REQUEST FOR AN
 ENFORCEMENT ORDER IMPOSING
 MONETARY SANCTIONS (\$4,442.00)
 AGAINST ALLEGED DEBTOR FRANCIS
 J. LOPEZ**

[BIFURCATED PHASE II]

Date: October 1, 2007 (Status Conference)
 Time: 10:30 a.m.
 Judge: The Honorable Peter W. Bowie
 Ctrm: 4

I, L. Scott Keehn, declare:

1. I am an attorney at law, duly licenced to practice before all courts of this State, and before the United States District Court for the Southern District of California. I am a shareholder of the firm Keehn & Associates APC, attorneys of record for Petitioning Creditors. I have personal knowledge of the factual matters stated herein.

2. On May 24, 2007, my office filed the "Declaration of L. Scott Keehn in Support of Petitioning Creditors' Motion for an Enforcement Order: (1) Imposing Monetary Sanctions

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1 Against the Debtor; and (2) Imposing Evidentiary Sanctions Against the Debtor," as Docket Item
 2 number 105 (attachment #2). In that Declaration, I summarized the delay and *bad faith* discovery
 3 tactics employed by Lopez during the 6-month period of December 3, 2006 through May 23, 2007.

4 3. On March 12, 2007, the Court ordered Lopez to provide supplemental discovery
 5 responses on or before April 11, 2007. The Court — in open session — indicated that it was
 6 deferring its ruling on the request for monetary sanctions of \$4,442 because: (a) it wanted the risk
 7 of those sanctions to serve as a *Sword of Damocles* to encourage compliance with the Court's
 8 order; and (b) Lopez would have to "work his way out of those sanctions." Unfortunately, Lopez
 9 is apparently unimpressed with either this Court's order or the threat of sanctions.

10 4. On June 25, 2007, the Court conducted its hearing on Petitioning Creditors' request
 11 for monetary and evidentiary sanctions based on Lopez's dilatory tactics up to that time.¹ The
 12 Court deferred again the imposition of previously requested monetary sanctions (\$4,442.00), but
 13 ordered the imposition of evidentiary sanctions precluding Lopez's use of any documents which he
 14 had not yet produced.²

15 5. On the courthouse steps following the June 25, 2007 hearing, I conferred with
 16 Lopez's attorney Jonathan Hayes regarding Petitioning Creditors' request to take Lopez's
 17 deposition. At that time, I stated that I would like to calendar the deposition before July 31, 2007
 18 because I would be out of my office for virtually the entire month of August. Mr. Hayes and I
 19 agreed that either July 20 or July 27 would work on our calendars, and Mr. Hayes indicated that he
 20 would inquire as to Lopez's availability on those dates.

21 6. Three days later, on June 28, 2007, Mr. Hayes transmitted to me the following
 22 email message: "*I have spoken to my client about the deposition dates we discussed, July 20 or 27.*
 23 *He is checking his calendar. I will let you know shortly.*" (Emphasis added.)

24 7. Twenty-two days later — in the early evening of July 20, 2007 — Mr. Hayes
 25 transmitted an email suggesting, for the first time, July 31, 2007, as an available date for the
 26

27 ¹ See, Exhibit A—Transcript of the June 25, 2007 hearing ("6/25/07 Transcript").

28 ² See, 6/25/07 Transcript at p. 17.

1 deposition.

2 8. Given that July 31, 2007 would be my last day in the office before a 30-day
3 vacation, I knew I would be fully consumed with matters necessary to be completed in preparation
4 for that absence. Because of that, and because of the fact that I had received absolutely no
5 communication from Mr. Hayes' office following the June 28, 2007, email, we issued and mailed
6 to Mr. Hayes a notice of Lopez's deposition for Tuesday, September 11, 2007, at 9:00 a.m. in our
7 office.

8 9. On July 31, 2007, there was a further Status Conference in the case. I reported to
9 the Court the events summarized in paragraphs 5-8 above, including the fact that we had noticed
10 Mr. Lopez's deposition for September 11, 2007. Mr. Hayes stated in open court that he would
11 communicate that information to Mr. Lopez, and let me know if there was any problem with that
12 date. That was the last I heard from Mr. Hayes until September 10, 2007.

13 10. In the afternoon of September 10, 2007 — less than 24 hours before the deposition
14 was scheduled to begin — Lopez's attorney sent me a brief email stating that Lopez was "*unable*
15 *to make travel arrangements for the deposition tomorrow.*" The email suggested October 8, 2007
16 or October 22, 2007 as possible dates for the deposition. Lopez's deposition is currently scheduled
17 for October 22, 2007 at 9:30 a.m. based on Mr. Hayes' representation that it was an acceptable
18 date and time.

19 11. As stated in open court on June 25, 2007,³ once Lopez's deposition is conducted,
20 Petitioning Creditors intend to prepare and file their summary judgment motion to establish that
21 Lopez was in fact not paying his debts as they came due as of the date of the involuntary petition.

22 12. Lopez's past misconduct in this case mirrors his extensive misconduct in other
23 litigation involving Lopez and Petitioning Creditor Alan Stanly in other San Diego courts, as
24 detailed in the Declaration of Timothy P. Dillon filed concurrently herewith. Considering Lopez's
25 pervasive custom and practice of refusing to perform his duties as a litigant unless and until he is
26 [forensically] bludgeoned into submission by the court, it appears clear that monetary sanctions
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28 ³ See, 6/25/07 Transcript at p. 18.

1 should now be imposed. Without a significant sanctions order, I do not believe that Lopez will
2 ever voluntarily appear for, and participate in good faith at, his deposition in this case.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct, and that this Declaration was executed this 27th day of September, 2007, at San
5 Diego, California.

6 /s/ L. Scott Keehn
7 L. Scott Keehn
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EXHIBIT A

0273

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
CHIEF JUDGE PETER W. BOWIE, PRESIDING

FRANCIS J. LOPEZ

)
)
) CASE NO. 05-05926-PB
)
)
)

- 1) STATUS CONFERENCE ON INVOLUNTARY PETITION AND
ANSWER
- 2) PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT
ORDER: A) IMPOSING MONETARY SANCTIONS AGAINST THE
DEBTOR; AND, B) IMPOSING EVIDENTIARY SANCTIONS AGAINST
THE DEBTOR.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SAN DIEGO, CALIFORNIA
MONDAY, JUNE 25, 2007

SAN DIEGO BANKRUPTCY REPORTERS
BY: LYNETTE ALVES
P.O.BOX 496
SOLANA BEACH, CA 92075
(858) 336-8558

APPEARANCES

M. JONATHAN HAYES

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SAN DIEGO, CALIFORNIA, MONDAY, JUNE 25, 2007 , 10:00

A.M.

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THE CLERK: IN THE MATTER OF FRANCIS J. LOPEZ. TWO MATTERS: CONTINUED STATUS CONFERENCE ON INVOLUNTARY PETITION AND ANSWER; AND, PETITIONING CREDITORS' MOTION FOR AN ENFORCEMENT ORDER (1) IMPOSING MONETARY SANCTIONS AGAINST THE DEBTOR; AND, (2) IMPOSING EVIDENTIARY SANCTIONS AGAINST THE DEBTOR. APPEARANCES, PLEASE.

MR. KEEHN: GOOD MORNING, YOUR HONOR. SCOTT KEEHN APPEARING ON BEHALF OF THE PETITIONING CREDITORS.

MR. HAYES: GOOD MORNING, YOUR HONOR. JOHN HAYES APPEARING FOR THE DEBTOR -- ALLEGED DEBTOR.

MR. KEEHN: YOUR HONOR, THIS PARTICULAR ODYSSEY BEGAN BEFORE THANKSGIVING, IF YOU CAN BELIEVE THAT, BACK ON NOVEMBER 3RD.

THE COURT: THAT'S NOTHING AT ALL COMPARED TO ADAMS. MR. KEEHN: YOU KNOW, I WAS HOPING YOU WOULDN'T JUST CONFINE YOURSELF TO THIS RECORD. AND ALSO THE CASE BEFORE, THERE WERE THIRTEEN MEET AND CONFER LETTERS; AND WE DON'T MEET THAT RECORD, EITHER. BUT THIS IS AN INVOLUNTARY PETITION. AND WE WERE HOPING TO MOVE IT ALONG WITH A LITTLE MORE ALACRITY THAN YOU MIGHT EXPECT IN --

THE COURT: SO YOU'RE SAYING IT REMAINS INVOLUNTARY?

MR. KEEHN: OH, VERY INVOLUNTARY.

WHAT WE HAVE HERE IN RESPONSE TO OUR REQUEST FOR DISCOVERY THAT WERE PROMULGATED NOW SEVEN MONTHS AGO; AT FIRST THERE WAS NO RESPONSE AT ALL IN THE APPROPRIATE PERIOD. ALL OBJECTIONS WERE WAIVED. AND WHEN WE MOVED FOR MOTION TO COMPEL THE SANCTIONS. COUNSEL COMES IN AND APOLOGIZES FOR DEBTOR, BEMOANS THE FACT THAT WE'RE ASKING FOR A LOT OF INFORMATION; AND AGREES TO THE COURT'S RULING THAT SUPPLEMENTAL RESPONSES SHOULD BE PROVIDED NOT LATER THAN THE 21ST OF MAY.

WELL, ON THE 21ST OF MAY -- AND, ACTUALLY NOTHING HAPPENED BETWEEN THE TIME THE COURT MADE THAT -- GAVE THE DEBTOR THAT SECOND CHANCE. NOTHING HAPPENED BETWEEN THEN AND MAY 21ST UNTIL SHORTLY AFTER SEVEN IN THE EVENING WHEN MR. HAYES E-MAILED MY E-MAIL WITH A REQUEST FOR A DAY OR TWO EXTENSION.

WELL, I DIDN'T HAVE ANY PROBLEM WITH A DAY OR TWO EXTENSION, AS LONG AS I GET AN EQUAL EXTENSION AND TIME TO REPLY. AS SOON AS I SAW THE E-MAIL THE FOLLOWING MORNING, I RELAYED THAT INFORMATION TO MR. HAYES.

IN RESPONSE TO THAT, I RECEIVED ANOTHER E-MAIL THAT SAID, NO, WE'RE NOT GOING TO PROVIDE ANYTHING ELSE AND WE'RE WITHDRAWING OUR REQUEST FOR EXTENSION.

SO ONCE AGAIN, WE HAVE THE TIME PERIOD PASSING AND, OF COURSE, WE WERE PREJUDICED, NOT IN AN OVERWHELMING

DEGREE, BUT NOTICEABLY BY THE FACT THAT IN RESPONSE TO THE FIRST E-MAIL WE HAD ANTICIPATED THAT WE WOULD NOT HAVE TO MEET THE ORIGINAL DEADLINE FOR RESPONSE.

SO, UPON RECEIVING THE WITHDRAWAL E-MAIL, WE QUICKLY REGROUPED AND DID OUR REPLY -- DID OUR MOTION, RATHER. WE HAD ONLY A FEW DAYS TO DO THAT, GIVEN THE SETTING OF THIS PARTICULAR HEARING IN ORDER TO GIVE AN ADEQUATE TIME TO RESPOND. SO WE DID THAT.

AND WE HAVE WHAT HAS BECOME A FAMILIAR PATTERN. WE HAVE, WHAT PURPORTS TO BE RESPONSES GIVEN ON BEHALF OF MR. LOPEZ; AND, IN FACT, THEY'RE NOT REALLY GOOD-FAITH RESPONSES AT ALL. THEY PROVIDE SOME PAPER, MOST OF WHICH WAS PLEADINGS IN CASES THAT MR. LOPEZ HAD EVERY REASON TO KNOW THAT WE ALREADY HAD AND SO WOULD BE COMPLETELY USELESS.

NOW, THIS PARTICULAR DISCOVERY DISPUTE CREATES A DYNAMIC THAT'S DIFFERENT FROM MOST DISCOVERY DISPUTES, BECAUSE MOST DISCOVERY DISPUTES ARISE IN TRADITIONAL LITIGATION. AND TRADITIONAL LITIGATION IS ALWAYS LOOKING BACK AT AN EVENT AND IS STATIC, IN TERMS OF WHERE THE LIABILITIES WILL FALL. BECAUSE THEY DEPEND ON WHAT HAPPENED BACK WHEN WHATEVER INCIDENT OCCURRED, WHATEVER COURSE OF CONDUCT OCCURRED THAT GAVE RISE TO THE TRADITIONAL LITIGATION.

SO YOU'RE ALWAYS LOOKING BACKWARDS AND YOU'RE NOT REALLY CONCERNED ABOUT WHAT'S HAPPENING ON A GOING-FORWARD BASIS.

THE DIFFERENT DYNAMIC THAT'S CREATED IN EVERY INVOLUNTARY PETITION IS THE INVOLUNTARY GAP DYNAMIC. BECAUSE, WHILE DELAY IS ALWAYS PREJUDICIAL TO BRINGING A MATTER TO ITS QUICK AND COST EFFECTIVE CONCLUSION, IT HAS AN AUXILIARY PREJUDICE IN INVOLUNTARY CASES BECAUSE THE DEBTOR IS FREE TO CREATE OBLIGATIONS THAT WILL BECOME INVOLUNTARY GAP CLAIMS AND LEAPFROG AHEAD IN PRIORITY TO THE CLAIMS OF THE CREDITORS THAT BROUGHT THE ACTION.

AND THAT PARTICULAR FORM OF PREJUDICE IS RENDERED ALL THE MORE DISTURBING BECAUSE THERE'S NO WAY TO MONITOR IT, NO WAY TO QUANTIFY IT. MR. LOPEZ IS OUT THERE. MAYBE HE'S NOT CREATING INVOLUNTARY GAP CLAIMS AND PERHAPS HE IS. BUT THE RISK IS THAT THE UTILITY OF THE REMEDY OF INVOLUNTARY BANKRUPTCY AS A CREDITOR'S REMEDY IS SUBJECT TO THIS FORM OF DILUTION, SIMPLY BECAUSE THE ALLEGED DEBTOR REFUSES -- I WANT TO UNDERSCORE THAT -- REFUSES TO COMPLY WITH THE DISCOVERY IN GOOD FAITH.

WE ARE TRYING TO NARROW THE ISSUES WITH THE EVIDENCE THAT'S AVAILABLE SO THAT WE CAN PROCEED IN THE SECOND PHASE, AS WE DID IN THE FIRST, TO PRESENT THE ISSUES TO THE COURT IN A SUMMARY JUDGMENT FASHION, BECAUSE WE THINK THIS CASE IS AMENABLE TO SUMMARY JUDGMENT.

AND MR. LOPEZ IS JUST VERY ADROITLY BLOCKING THAT WITH THIS PASSIVE/AGGRESSIVE TACTIC OF HIS, WHERE HE DOESN'T REPLY AT ALL UNTIL HIS BACK IS ABSOLUTELY TO

THE WALL AND SOME DRACONIAN CONSEQUENCE MIGHT BEFALL HIM. AND THEN HE'LL RESPOND, BUT HE WON'T REALLY RESPOND IN GOOD FAITH. HE GIVES YOU A PARITY OF GOOD-FAITH, THAT DOES NOT ADVANCE THE PURPOSES OF DISCOVERY.

NOW, WE SHOULDN'T HAVE TO WAIT UNTIL HIS BACK IS AGAINST THE WALL TO GET OUR RESPONSES. WE'RE ENTITLED TO OUR RESPONSES THIRTY DAYS AFTER THEY'RE SERVED, THIRTY-THREE WHEN THEY'RE SERVED BY MAIL.

AND WE'RE LONG PAST THAT WITH THESE DISCOVERY REQUESTS THAT WERE PROMULGATED BACK IN NOVEMBER. AND AS THE OBJECTION DISCLOSES, THE ALLEGED DEBTOR IS WELL AWARE THAT WE'RE DOING, ONCE AGAIN, WHAT WE DID IN THE FIRST PHASE; WE'RE USING THE WRITTEN DISCOVERY AS, TO SORT OF TEE UP THE ISSUES FOR OUR, DEPOSITION EXAMINATION, WHICH IS THE NORMAL WAY TO PROCEED.

SO BY HINDERING AND DELAYING THE DISCOVERY PROCESS IN THE WRITTEN PHASE, HE NATURALLY DEFERS THE ORAL EXAMINATION, WHICH IN TURN DEFERS, ONCE AGAIN, THE DAY OF RECKONING. AND ALL THE WHILE HE'S FREE TO BE OUT THERE INCURRING FURTHER GAP CLAIMS.

SO I THINK THAT WHAT WE'VE SUGGESTED IN OUR PAPERS IS THE APPROPRIATE RESPONSE. NUMBER ONE, THE DEFERRED MONETARY SANCTIONS THAT THE COURT ORIGINALLY AWARDED OF \$42 000 -- EXCUSE ME, I'M DREAMING -- \$4,242. SHOULD BE IMPOSED.

THE -- I DON'T THINK THAT THE RESULT THE COURT HAD

HOPED TO ACHIEVE BY DEFERRING IT HAS BEEN ACHIEVED. I DON'T THINK IT EVER WILL BE ACHIEVED. I THINK THAT THIS IS JUST MR. LOPEZ'S LITIGATION TACTIC; HALT, HINDER AND DELAY AND MAYBE I'LL HAVE TO ANSWER SOMEDAY.

THE EVIDENTIARY SANCTIONS THAT WE'VE REQUESTED, I THINK, ARE APPROPRIATE. AND THEY WILL FACILITATE THE PURPOSE OF DISCOVERY, BECAUSE THEY NARROW THE ISSUES FOR US, EVEN WITHOUT THE COOPERATION OF THE ALLEGED DEBTOR.

SO WE WOULD REQUEST THAT THE EVIDENTIARY SANCTIONS BE IMPOSED AS REQUESTED, AND THAT THE MONETARY SANCTION BE AWARDED FORTHWITH, WITH A DATE CERTAIN ESTABLISHED AS TO WHEN THAT SECTION SHOULD BE PAID.

THE COURT: MR. HAYES.

MR. HAYES: YOUR HONOR, THANK YOU. I HAVE A COUPLE OF COMMENTS.

THE FIRST ONE IS, I WANTED TO COMMENT ON THIS, THE REQUEST I'VE MADE OF MR. KEEHN FOR ANOTHER ONE OR TWO DAYS. I'VE HAD -- MR. LOPEZ LIVES IN FLORIDA, AND I HAVE A HARD TIME COMMUNICATING WITH HIM. WE COMMUNICATE BY E-MAIL AND I HAVE HIS CELL PHONE, AND INEVITABLY, I CATCH HIM WHEN HE'S PICKING HIS KIDS UP OR HE'S IN A STORE OR SOMETHING AND THERE'S THE THREE-HOUR TIME GAP.

ANYWAY, I SPOKE TO HIM VERY BRIEFLY A COUPLE OF TIMES. I SAID, LOOK, WE HAVE TO GET THEM MORE DOCUMENTS.

THERE'S -- MR. KEEHN SENT ME THIS LETTER, WHAT ARE WE GOING TO DO? WE DISCUSSED IT REAL QUICKLY. AND FINALLY, THE TIME CAME WHERE HE ABSOLUTELY HAD TO FILE A RESPONSE, AND THAT'S WHEN I SENT THE E-MAIL TO MR. KEEHN SAYING, GIVE ME ANOTHER DAY OR TWO.

THE FOLLOWING DAY I SPOKE TO MR. LOPEZ AT GREAT LENGTHS. AND WE WENT THROUGH THE LETTER ONE BY ONE. AND I MEAN, THERE ISN'T ANYTHING ELSE WE CAN COME UP WITH. THERE ISN'T ANY OTHER DOCUMENTS EXCEPT THIS ISSUE WITH THE WIFE. THERE ISN'T ANY DOCUMENTS THAT HAVEN'T BEEN TURNED OVER. THERE ISN'T ANY, ANY MORE EXPLANATION OR, OR, MORE DETAILS THAT WE COULD GIVE, OTHER THAN REALLY REPEAT INFORMATION THAT'S ON VARIOUS -- OF THE MANY STATEMENTS THAT HAVE BEEN TURNED OVER I BELIEVE MANY TIMES BY NOW.

BUT, ADDRESSING THE MOTION, THE MOTION HAS TWO PARTS. ONE IS GRANT THESE SANCTIONS, WHICH I, FRANKLY, BELIEVE HAS ALWAYS BEEN THE GOAL. AND THE SECOND IS THESE EVIDENTIARY SANCTIONS.

AS FAR AS THE SANCTIONS, THE \$4000. I JUST WANT TO SAY AGAIN, I JUST DON'T THINK THERE'S ANY OTHER DOCUMENTS THAT CAN BE TURNED OVER OTHER THAN MRS. LOPEZ'S DOCUMENTS, THERE ARE NO OTHER DOCUMENTS THAT CAN BE TURNED OVER THAT HAVEN'T ALREADY BEEN TURNED OVER.

I BROUGHT MR. LOPEZ'S FIRST DEPOSITION. IT'S 240-SOMETHING PAGES. THIS IS WELL MORE THAN A YEAR AGO. THE REST OF THESE PAPERS ARE EXHIBITS. EVERY

STATEMENT OF EVERY ONE OF HIS BILLS OF THE TWENTY OR SO CREDITORS ARE ALL CONSUMER DEBTS. THIS IS WELL MORE THAN A YEAR OLD.

MR. KEEHN HAS SENT OUT SEVERAL SUBPOENAS. I'M ACTUALLY NOT SURE WHAT HE'S GOTTEN FROM THOSE. WE PROVIDED MORE DOCUMENTS TWICE IN THIS GO AROUND. IF MR. KEEHN REALLY WANTED TO GET MOVING WITH THIS, JUST TAKE THE DEPOSITION AGAIN. HE'S BEEN TELLING ME HE'S GOING TO TAKE THIS DEPOSITION. HE SOMEHOW CAN'T BECAUSE HE REALLY -- THERE'S SOME MAGICAL PIECE OF PAPER THAT I'M NOT CLEAR ABOUT THAT HE HASN'T GOTTEN YET; AND THEREFORE, HE CAN'T GO FORWARD. THAT'S JUST RIDICULOUS.

WITH RESPECT TO THE DOCUMENTS IN MRS. LOPEZ'S POSSESSION, I'VE ACTUALLY NEVER MET MRS. LOPEZ. BUT I MEAN, MY WIFE HAS A CHECKING ACCOUNT AND SHE CARRIES THE CHECKBOOK AROUND IN HER PURSE. AND I'D BE LOOKING FOR A DIVORCE ATTORNEY IF I WENT INTO HER PURSE AND FOUND HER CHECKBOOK AND STARTED SENDING OFF INFORMATION SOMEBODY HAPPENED TO BE SUING ME.

THE COURT: SO YOU'RE CONTENDING THIS IS ALL SEPARATE PROPERTY, AND HE HAS NO INTEREST WHATSOEVER IN THE FUNDS THAT SHE ADMINISTERS OR THE DEBT SHE'S INCURRED WHETHER IT'S A LEHMAN BROTHERS, OR THE MORTGAGE ON THE HOUSE OR ANY OF THOSE KINDS OF THINGS?

MR. HAYES: I DON'T KNOW IF I'D GET INTO WHETHER IT'S COMMUNITY PROPERTY OR NOT. BUT IF THEY WANT, I

MEAN, THEY CAN GO AFTER HER. THEY CAN SUBPOENA HER OR THEY CAN COME IN WITH SOME SORT OF EVIDENCE OF WHY THEY HAVE THE RIGHT TO MAKE MR. LOPEZ --

THE COURT: SO WHAT'S YOUR THEORY, WHAT'S YOUR THEORY ON WHY SHE DOESN'T HAVE TO PROVIDE AN ANSWER WITH RESPECT TO WHAT SHE HAS OR HOLDS OR PAYS, PARTICULARLY, IF HE'S GOT SOME OBLIGATION OR LIABILITY ON IT?

MR. HAYES. THEY HAVEN'T ASKED HER. THEY'RE ASKING HIM.

THE COURT: NO. THAT'S NOT MY QUESTION. MY QUESTION IS, WHAT'S YOUR THEORY FOR WHY HE DOESN'T HAVE TO ANSWER THAT QUESTION?

MR. HAYES: THAT'S HER RIGHT TO PRIVACY.

THE COURT: SO IT'S HER RIGHT TO PRIVACY, BECAUSE IT'S SOME SEPARATE INTEREST OF HERS OR WHAT?

WHERE DOES SHE HAVE A RIGHT TO PRIVACY ON SOMETHING THAT YOU SAY YOU DON'T GET TO THE COMMUNITY PROPERTY QUESTION. I MEAN, HE'S GOT A COMMUNITY PROPERTY INTEREST IN IT, IF HE'S GOT A STATE STATUTORY RIGHT TO CO-MANAGEMENT OF COMMUNITY ASSETS OR ANYTHING ELSE THAT I HAVE NO IDEA WHAT FLORIDA LAW PROVIDES.

I'M ASKING YOU WHAT YOUR THEORY IS FOR WHY HE DOESN'T HAVE TO ANSWER IT?

MR. HAYES: WELL, FOR ONE THING, FLORIDA IS NOT COMMUNITY PROPERTY. AND I DON'T KNOW HOW FLORIDA LAW IS. BUT WHAT I FOCUSED ON IS MR. LOPEZ, GO TO YOUR

WIFE AND GET THESE DOCUMENTS.

THE COURT: NO, POSSESSION -- YOU KNOW, WHAT DOES HE HAVE IN HIS POSSESSION OR CONTROL? WHAT DOES HE HAVE? HAS HE PRODUCED EVERYTHING THAT'S IN HIS POSSESSION OR CONTROL WITH RESPECT TO THAT?

MR. HAYES: OH, ABSOLUTELY. BUT THAT'S --

THE COURT: AND THAT'S INCLUDING AS TO HIS LIABILITY WITH RESPECT TO IT?

MR. HAYES: YES. AS FAR AS I KNOW. BUT THAT DOES RAISE THE QUESTION OF DOES -- IS WHAT'S IN HIS WIFE'S PURSE IN HIS POSSESSION OR CONTROL? I MEAN, THAT'S WHAT HE'S TELLING ME. I CAN'T --

THE COURT: NO. YOUR ANSWER IS, HE HAS NO INTEREST OR OBLIGATION IN THE LEHMAN BROTHERS OR THE MORTGAGE OR WHATEVER IT IS, THEN WHY DON'T YOU AGREE TO THOSE EVIDENTIARY SANCTIONS AS WELL? YOU SAY HE'S TURNED OVER EVERYTHING.

MR. HAYES: WELL, EVERYTHING THAT'S IN HIS POSSESSION OR HIS CONTROL WITHOUT GETTING DIVORCED; YES.

THE COURT: THEN THE ANSWER, IT SEEMS TO ME, IS THAT YOU AGREE TO THE EVIDENTIARY SANCTIONS, SAID THAT HE CANNOT PRODUCE ANYTHING HE HAS NOT ALREADY PRODUCED, COME TIME OF TRIAL WITH RESPECT TO THE ISSUE THAT WE'LL BE LITIGATING IN THIS PHASE 2 OF THIS ISSUE.

MR. HAYES: I MIGHT DO THAT. I HADN'T THOUGHT OF

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IT, MYSELF.

I WAS FOCUSING ON THE MOTION, WHICH BASICALLY ASKED YOU TO GRANT SUMMARY JUDGMENT TODAY. BUT I WOULD AGREE WITH THE THEORY THAT THINGS -- HE SHOULDN'T BE ABLE TO COME IN WITH SOMETHING AFTER THIS, OR HE SHOULDN'T BE ABLE TO, "QUOTE," "UNQUOTE," FIND SOMETHING, YOU KNOW, TWO DAYS BEFORE TRIAL.

AND I DO BELIEVE EVERYTHING'S BEEN TURNED OVER.

THE COURT: WELL, THAT'S WHAT MR. KEEHN IS -- I HAVE NO IDEA WHAT HIS STRATEGY IS, BUT THAT'S AT LEAST WHAT HE'S ASKING FOR IN THE CONTEXT OF THIS MOTION, BECAUSE HE WANTS TO BE ABLE TO CLOSE THE BOOK AND THEN GO TAKE YOUR CLIENT'S DEPO KNOWING THAT YOUR CLIENT IS NOW PRECLUDED FROM STEPPING UP AND SAYING OH, BUT HERE'S THIS, AND HERE'S THIS AND HERE'S THAT; AND NOT EVER HAVING HAD A CHANCE TO LOOK AT IT OR INDEPENDENTLY VALIDATE IT FROM THIRD PARTIES OR ANY OF THOSE KINDS OF THINGS.

YOU WOULDN'T WALK INTO A DEPO BLIND THAT WAY. I'M CONFIDENT OF THAT.

MR. HAYES: NO. YOU KNOW, WHAT I WAS FOCUSING ON IS THE MOTION SAYS ELIMINATE ALL EVIDENCE ENTIRELY REGARDING EACH ONE OF THESE CATEGORIES; NOT JUST ELIMINATE -- NOT JUST HAVE AN EVIDENTIARY SANCTION THAT WE CAN'T FIND, "QUOTE," "UNQUOTE," FIND MORE DOCUMENTS.

I THINK I WOULD AGREE TO THAT. WHATEVER DOCUMENTS

HAVEN'T BEEN TURNED OVER UP TO NOW, I WOULD AGREE TO THAT.

THE COURT: OKAY.

MR. HAYES: I'M NOT SURE I -- YOU KNOW, HE JUST FOUND A JOB AND HE DOESN'T HAVE \$4,400. AND I DON'T KNOW WHAT ELSE I CAN SAY.

YOU SAID, YOU'RE NOT SURE WHAT MR. KEEHN'S STRATEGY IS. I MEAN, IF THEY REALLY WANTED THIS CASE TO BE FINISHED, THEY WOULD HAVE TAKEN HIS DEPOSITION SIX OR EIGHT MONTHS AGO.

THE COURT: I WOULDN'T HAVE. I WAS A LITIGATOR FOR A BUNCH OF YEARS. I'M NOT WALKING INTO A DEPOSITION WHEN THERE'S A WHOLE BUNCH OF DOCUMENTS OUT THERE AND HAVE THEM SURPRISE ME.

MR. HAYES: WELL, I DON'T THINK THERE ARE.

THE COURT: WELL --

MR. HAYES: FOR MONTHS THERE HAVEN'T BEEN A WHOLE BUNCH OF DOCUMENTS OUT THERE, BUT ALL RIGHT, I HAVE NOTHING FURTHER.

THE COURT: OKAY. MR. KEEHN.

MR. KEEHN: YES. THANK YOU, YOUR HONOR.

IN ADDITION TO THE REASONS THAT YOU'VE ALLUDED TO AS TO WHY YOU WOULDN'T TAKE THE DEPOSITION WITHOUT THE DOCUMENTS, THERE WERE RESPONSES THAT MR. LOPEZ GAVE IN HIS ORIGINAL DEPOSITION A YEAR AGO, NOW, THAT TO THE EFFECT THAT, WELL THERE ARE MORE DOCUMENTS. I JUST HAVE TO LOOK AT THEM. AND OBVIOUSLY THAT'S A DOOR WE

NEED TO CLOSE. IF WE GET THE EVIDENTIARY SANCTIONS, AS MR. HAYES SUGGESTED, WE'VE CLOSED THE DOOR. AND I, IN TERMS OF THE -- IF HE'S AGREEING TO THE SANCTIONS THEN I DON'T NEED TO ADDRESS HOW HELLACIOUS THIS ARGUMENT OF MARITAL STRESS IS CONCERNED. I DID HAVE SOME DOCUMENTS THAT WERE RECENTLY FILED IN THE DISTRICT COURT THAT BLOW THAT OUT OF THE WATER. BUT IF HE'S AGREEING TO IT, I WON'T ADDRESS IT.

AS FAR AS THE MONETARY SANCTION IS CONCERNED, YOUR HONOR, THIS -- WE TRIED TO CLOSE THE DOOR IN A PROCESS THAT BEGAN SEVEN MONTHS AGO. I SHOULDN'T BE HERE SEVEN MONTHS LATER CLOSING IT ON A CAPITULATION TO A SECOND MOTION TO COMPEL THAT I SHOULDN'T HAVE HAD TO FILE.

IF THERE REALLY ARE NO DOCUMENTS, THEN WHY IS THE RESPONSE, WELL, THERE'S MORE THINGS I NEED TO CHECK AND I CAN'T BE SURE. IF THERE REALLY ARE NO DOCUMENTS, THEN WHY WAS THAT ANSWER NOT GIVEN BACK IN MAY? WHY WAS IT NOT GIVEN BACK IN DECEMBER WHEN IT WOULD HAVE BEEN TIMELY? THERE'S NO EXPLANATION FOR THAT.

THIS IS EXACTLY THE KIND OF GAMESMANSHIP THAT RULE ONE OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE ABHORS. THE PURPOSE OF THE RULES, THEMSELVES, IS TO PROVIDE A MECHANISM AND A FRAMEWORK FOR THE RAPID AND FAIR RESOLUTION OF ISSUES.

NOW, ONE COMMENT, SORT OF, AT LEAST I INFERRED THE

ARGUMENT FROM THE FACT THAT WE HAVE TWO TO THREE INCHES OF PAPER FROM THE ORIGINAL DEPOSITION. AND WHY ARE WE STILL HERE A YEAR LATER?

IN ADDITION TO NOT HAVING THE DOCUMENTS PRODUCED, WE ALSO HAVE THE POINT THAT THIS CASE WAS BIFURCATED AT MR. LOPEZ'S REQUEST. THERE WERE MANY QUESTIONS THAT I COULD EASILY HAVE ASKED THE FIRST GO AROUND THAT MIGHT HAVE OBIATED THE NEED FOR FURTHER DEPOSITION, OR AT LEAST REDUCED IT. I COULDN'T BECAUSE OF THE CONSTRAINTS PLACED BY THE BIFURCATION ORDER. AND I TRIED TO ADHERE TO THAT ORDER. SO I HAVE TO TAKE HIS DEPOSITION YET A SECOND TIME.

AND THEN ONE OF THE LAST REMARKS THAT COUNSEL MADE, I THINK, UNDERSCORES THE NEED FOR THE SANCTIONS HAVING BEEN IMPOSED BECAUSE IT HIGHLIGHTS THE GAMESMAN-LIKE APPROACH THAT MR. LOPEZ HAS TAKEN. AND THAT, THAT COMMENT WAS, HE JUST GOT A JOB.

WELL, IF BY THAT HE'S REPRESENTING TO THE COURT THAT UP UNTIL THIS TIME HE'S BEEN UNEMPLOYED, I THINK THAT EXACERBATES THE CULPABILITY OF MR. LOPEZ IN NOT TIMELY RESPONDING. WHAT ELSE WAS HE DOING? WAS HE REALLY SPENDING FORTY HOURS A WEEK LOOKING FOR A JOB?

IF HE WAS UNEMPLOYED, CERTAINLY HE WOULD HAVE HAD MORE TIME AVAILABLE TO TEND TO HIS DUTIES AS A LITIGANT THAN A FULLY-EMPLOYED INDIVIDUAL WOULD. AND EVEN A FULLY-EMPLOYED INDIVIDUAL IS EXPECTED TO RESPOND AND RESPOND TIMELY TO DISCOVERY OBLIGATIONS.

AS I SAID IN THE BEGINNING, WE DON'T KNOW TODAY, AND WE WON'T KNOW UNTIL THAT ORDER FOR RELIEF IS ENTERED AND SCHEDULES ARE FILED, IF THAT EVER HAPPENS. HOW MUCH THIS ESTATE AND THE GENERAL UNSECURED CREDITORS THAT BROUGHT THIS POSITION HAVE BEEN PREJUDICED BY THIS DELAY AND THE INCURRING OF GAP CLAIMS?

I THINK THAT MESSAGE THE COURT SENT THE FIRST TIME TO MR. LOPEZ WAS, I'LL GIVE YOU ANOTHER CHANCE. I THINK THE MESSAGE THAT THE COURT NEEDS TO SEND TO MR. LOPEZ NOW IS, THIS ISN'T A GAME. AND THERE AREN'T ANY MORE CHANCES. AND YOU DIDN'T PLAY BY THE RULES, AND SO THE SHIELD THAT I PUT IN FRONT OF YOU BEFORE, IS NOW DOWN. AND THESE SANCTIONS ARE DUE AND PAYABLE.

THE COURT: WELL, IN MY VIEW, AT LEAST AT THIS POINT IN TIME AND ON THE PRESENT STATE OF THE RECORD, THE EVIDENTIARY SANCTIONS ARE WARRANTED, AND WILL BE ORDERED IN THE FOLLOWING RESPECTS:

WITH RESPECT TO DEBTOR'S RESPONSE TO REQUEST FOR ADMISSION NUMBER FIVE, THAT WILL BE, AND THE DEBTOR HAS AGREED, THAT WILL BE AN UNQUALIFIED ADMISSION; DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS FROM NOVION BETWEEN JANUARY 1 OF 2005 TO JULY 1 OF 2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF PAYMENTS OF CASH RECEIVED FROM JANUARY 1, 2005 TO JULY 1, 2005;

DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF

PAYMENTS OF CASH RECEIVED BY HIS WIFE BETWEEN JANUARY 1, 2005 AND JULY 1 OF 2005. AND I WILL ADD, AS TO THESE PROHIBITIONS, THAT'S TO THE EXTENT NOT ALREADY DISCLOSED TO THE MOVING CREDITORS, THE PETITIONING CREDITORS. IF IT'S BEEN DISCLOSED, THEN IT'S THERE. THERE'S NO PRECLUSION OF USE OF THAT INFORMATION IF IT'S BEEN PREVIOUSLY PROVIDED TO THE PETITIONING CREDITORS, IN THE CONTEXT OF THE DISCOVERY OF THIS CASE;

THE DEBTOR WILL BE PROHIBITED FROM PROVIDING ANY EVIDENCE OF A DEBT IN FAVOR OF LEHMAN BROTHERS OR ANY PAYMENT TO LEHMAN BROTHERS AS OF THE PETITION DATE EXCEPT TO THE EXTENT AND SAME PROVISIO, EXCEPT TO THE EXTENT ALREADY DISCLOSED TO THE COUNSEL FOR PETITIONING CREDITORS;

AND, DEBTOR WILL BE PROHIBITED FROM PROVIDING EVIDENCE OF DEBT IN FAVOR OF AMERICAN EXPRESS, BANK OF AMERICA, BANK CARD, CINGULAR, CITI CARD, HOUSEHOLD BANK, NORTHWEST FLORIDA DAILY NEWS, CITIBANK QUICKEN, TEXACO, VERIZON, UNION BANK, OR MR. GORRILL OR ANY PAYMENT TO ANY OF THEM AS OF THE PETITION DATE, EXCEPT TO THE EXTENT ALREADY PROVIDED THE COUNSEL FOR PETITIONING CREDITORS IN THE CONTEXT OF THE DISCOVERY IN THIS MATTER.

AS TO THE MONETARY SANCTIONS, I AM, AGAIN, GOING TO DEFER AWARDING THOSE. BUT THEY REMAIN THE SORT OF DAMOCLES OVER MR. LOPEZ. BECAUSE I DON'T KNOW THE

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ANSWER TO SOME OF MR. KEEHN'S SPECULATION AS TO WHAT'S GOING ON. MR. KEEHN IS CONVINCED THAT THIS IS A GAME THAT MR. LOPEZ IS PLAYING. I'M NOT YET CONVINCED OF THAT.

SO EVENTUALLY WE WILL GET TO THE ANSWER ONE WAY OR THE OTHER. AND ONCE I KNOW THE ANSWER, I'LL APPLY THEM, IF I DEEM THAT'S APPROPRIATE AT THE TIME. BUT THE EVIDENTIARY SANCTIONS AT THIS POINT IN TIME ARE WARRANTED. I'LL SIGN AN ORDER TO THAT EFFECT.

MR. KEEHN: THANK YOU, YOUR HONOR.

THE COURT: OKAY. NOW, WE HAVE A STATUS CONFERENCE. TIMING.

ARE YOU, NOW, LOOKING AT THE DEPOSITION, MR. KEEHN?

MR. KEEHN: I AM. AND CONSISTENT WITH THE LOCAL RULES, I NEED TO CONFER WITH COUNSEL AS TO AVAILABLE DATES.

MR. HAYES: I HAVE TO BE BACK HERE JULY 31ST. THAT'S A LITTLE QUICK, BUT I'M GOING TO BE HERE ANYWAY.

THE COURT: JULY 31ST? THAT'S A TUESDAY.

MR. KEEHN: YES.

THE COURT: WHAT TIME IS YOUR HEARING ON THE 31ST?

MR. HAYES: AT 10:00. IT'S A SUMMARY JUDGMENT MOTION, SO IT COULD BE IN THE AFTERNOON; SUMMARY JUDGMENT MOTION THAT HASN'T BEEN FILED.

THE COURT: WE COULD DO 2:00 P.M. ON THE 31ST. DOES THAT WORK?

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17

MR. KEEHN: IT'S CLEAR ON MY CALENDAR, YOUR HONOR.

MR. HAYES: 2:00?

THE COURT: OKAY. AND WE'LL DO THAT AS A FURTHER STATUS CONFERENCE. BUT IN THE MEANTIME, I ASSUME THE TWO OF YOU WILL MEET AND CONFER ON A DEPOSITION DATE. AND THEN ONCE THE DEPOSITION IS CONCLUDED, I ASSUME MR. KEEHN, YOU'RE PLANNING A MOTION?

MR. KEEHN: I AM.

THE COURT: JUST SO MR. HAYES SEES WHAT'S COMING AND THEN WE'LL -- ONCE THAT MOTION'S DECIDED, WE'LL KNOW WHERE WE GO NEXT, IF ANYWHERE.

MR. HAYES: GREAT.

MR. KEEHN: THANK YOU, YOUR HONOR.

MR. HAYES: THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT. WE'LL BE IN RECESS.

STATE OF CALIFORNIA

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18

COUNTY OF SAN DIEGO

I, LYNETTE ALVES, OFFICIAL REPORTER, DO
HEREBY CERTIFY:

THAT I REPORTED IN SHORTHAND THE PROCEEDINGS
HELD IN THE FOREGOING CAUSE ON THE 25TH DAY OF JUNE,
2007; THAT MY NOTES WERE LATER TRANSCRIBED INTO
TYPEWRITING UNDER MY DIRECTION; AND, THAT THE
FOREGOING TRANSCRIPT CONTAINS A CORRECT STATEMENT OF
THE PROCEEDINGS.

DATED THIS _____ DAY OF _____,
2007.

LYNETTE ALVES, CSR #12534, RPR #61256

1 L. Scott Keehn, SBN 61691
 Leslie F. Keehn, SBN 199153
 2 KEEHN & ASSOCIATES
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 3 402 West Broadway, Suite 1210
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 4 Telephone: (619) 400-2200
 5 Attorneys for Petitioning Creditors

6
 7
 8 UNITED STATES BANKRUPTCY COURT
 9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
 10

11 In Re:

12 FRANCIS J. LOPEZ,
 13 Alleged Debtor.

Case No. 05-05926-PBINV

DECLARATION OF TIMOTHY P. DILLON
 [BIFURCATED PHASE II]

Date: October 1, 2007 (Status Conference)
 Time: 10:30 a.m.
 Judge: The Honorable Peter W. Bowie
 Crm: 4

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 20 I, TIMOTHY P. DILLON, declare as follows:

21 1. I am an attorney duly admitted to practice before the Courts of this State. I am a
 22 shareholder of the law firm of Dillon & Gerardi, APC, counsel for Petitioning Creditor Alan
 23 Stanly ("Stanly") in certain cases involving the alleged debtor herein, Francis J. Lopez ("Lopez"),
 24 which were and/or are pending before the San Diego Superior Court and the United States District
 25 Court for the Southern District of California (the "Additional Lopez Cases"). In connection with
 26 the Additional Lopez Cases, I am the *shareholder in charge* of the engagement of the firm on
 27 behalf of Stanly, and the attorney within the firm who is most knowledgeable with respect to all
 28 aspects of the Additional Lopez Cases. I make this Declaration based upon facts within my

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1 firsthand knowledge acquired in the course of conducting litigation against Lopez in the
2 Additional Lopez Cases.

3 2. The delay and bad-faith litigation tactics employed by Lopez and his counsel
4 throughout the Additional Lopez Cases are summarized below.

5 *Union Bank of California v. Francis J. Lopez, et. al.*

6 San Diego Superior Court(Case No.: GIN 030827)

7 Case Summary (06/2003 - 09/2004):

8 3. In or about June of 2003, Union Bank of California initiated a litigation against
9 both Lopez and Stanly as guarantors of a loan which their corporation, Prism, had defaulted on.
10 Both Lopez and Stanly filed cross-claims against each other for contribution and indemnity.
11 Lopez and Stanly eventually settled with Union Bank. Stanly prevailed on a motion for good faith
12 settlement and obtained a dismissal of Lopez's cross-claims. At time of trial, the sole issues left in
13 the case were Stanly's claims against Lopez for indemnity and contribution. Trial in the Union
14 Bank matter was continued several times due to Lopez's dilatory conduct, as more fully set forth
15 below. When the Court finally held trial, neither Lopez nor his counsel appeared. Trial proceeded
16 without Lopez.

17 Summary of Dilatory / Bad Faith Tactics:

18 4. On March 9, 2004, Lopez requested a trial continuance due to the "illness of his
19 wife's aunt." Based on that request, the parties ultimately stipulated to continue the trial for four
20 months — until July 9, 2004.

21 5. On July 2, 2004 — the date of the trial readiness conference — Lopez's attorney,
22 Joseph Fischbach ("Fischbach"), faxed a "Declaration re: Non-Readiness for Trial" to my office.
23 A true and correct copy of that Declaration is attached hereto as Exhibit 1 to the "Compendium of
24 Exhibits in Support of Renewed Request for an Enforcement Order Imposing Monetary Sanctions
25 Against Alleged Debtor Francis J. Lopez" (hereinafter referred to as the "Exhibits Compendium")
26 filed concurrently herewith. In his Declaration, Fischbach stated that he would be unable to
27 appear for trial because he had scheduled another trial for July 7, 2004. This was the first time
28 Fischbach had ever indicated that he would be unable to attend trial. He did not personally appear

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1 at the trial readiness conference. Instead, Fischbach sent an *appearance counsel* to the trial
2 readiness conference who was not affiliated with Fischbach's law firm, and was unfamiliar with
3 the case. Because a "Declaration for Non-Readiness for Trial" is not a proper method of obtaining
4 a trial continuance, and Lopez did not properly apply for a continuance of trial, the Court had no
5 legal basis on which to order a continuance. The Court then confirmed that trial call would
6 remain set for July 9, 2004.

7 6. On July 9, 2004, Lopez and his counsel failed to appear for trial, and the trial court
8 issued an Order to Show Cause as to why sanctions should not be issued against them. A true and
9 correct copy of the Order is attached as Exhibit 2 to the Exhibits Compendium.

10 7. On July 16, 2004, Fischbach appeared before the Court and confirmed that he was
11 in trial on another matter on the dates set for trial in *Union Bank of California v. Francis J. Lopez,*
12 *et. al.* and stated that his failure to appear at the scheduled trial date was due to a mix-up with
13 co-counsel. No declaration of co-counsel was ever provided to corroborate the existence of the
14 mix-up or how it came to be. Additionally, Lopez provided declarations to the Court from himself
15 and his physician stating Lopez was suffering from "diverticulitis" and was too ill to participate in
16 a trial. A true and correct copy of the Declarations is attached as Exhibit 3 to the Exhibits
17 Compendium. This was the first time the Court had been advised of Lopez's purported
18 diverticulitis. Stanly was aware that Lopez could easily induce the aggravating symptoms of his
19 condition by eating popcorn. The Court continued the trial for approximately 60 days — until
20 September 10, 2004.

21 8. On September 9, 2004 — one day before the twice-continued trial was set to begin
22 — Lopez applied *ex parte* for a third trial continuance. A true and correct copy of the Ex Parte
23 Application is attached as Exhibit 4 to the Exhibits Compendium. Lopez claimed he was still
24 suffering from diverticulitis, and that the medication he took for it made him "groggy." Lopez
25 further stated that he could not appear for trial due to scheduled colonoscopy and endoscopy
26
27
28

See, Exhibits Compendium Tab 4.

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1 procedures.² The evidence in support of Lopez's application was defective in that the declarations
2 were not signed under penalty of perjury under the laws of the State of California. The Court
3 ordered the application continued until September 10, 2004, and the Court's minute order
4 provided precise instructions to Lopez as to how to provide a competent declaration. A true and
5 correct copy of that Order is attached as Exhibit 5 to the Exhibits Compendium.

6 9. On September 10, 2004, Stanly appeared with a proposal for the commencement of
7 trial. Lopez appeared through *appearance counsel* who was not affiliated with Fischbach's law
8 firm, and was unfamiliar with the status of the case. Despite the Court's specific instruction, no
9 competent declaration was provided to support Lopez's request for a third trial continuance.
10 Based on that, the Court denied his request.

11 10. Trial proceeded on September 14, 2004, wherein Stanly obtained a judgment
12 against Lopez for \$50,000.

13 *Francis Lopez v. Alan Stanly*

14 San Diego Superior Court (Case No.: GIN029692)

15 Case Summary (05/2003 - 06/2005):

16 11. This case has been stayed by the involuntary bankruptcy petition filed herein.
17 Lopez initially sued Stanly for breach of fiduciary duty, trespassing, conversion and invasion of
18 privacy. All but the invasion of privacy claims were dismissed via a motion for summary
19 adjudication. Stanly counter-claimed on a variety of claims, including breach of fiduciary duty,
20 unfair competition and misappropriation of trade secrets. Stanly obtained many discovery
21 sanctions against Lopez for his discovery violations. Because of the involuntary bankruptcy
22 petition, the Court did not issue monetary sanctions against Lopez. However, prior to the filing of
23 the bankruptcy petition, a discovery referee recommended the issuance of several thousand dollars
24 of discovery sanctions against Lopez, and \$5,198.75 of discovery sanctions were issued against
25 Lopez's counsel and co-Plaintiff. The Court also issued evidentiary sanctions against Lopez.

26 ///

27
28 ² *Id.*

1 Summary of Dilatory / Bad Faith Tactics:

2 12. Without justification or excuse, Lopez failed to provide any response to Stanly's
3 First Set of written discovery propounded on him on December 31, 2003. Stanly filed a motion to
4 compel discovery responses. During the extended meet and confer process, the parties worked out
5 a resolution whereby Lopez paid Stanly \$600 in sanctions and provided Stanly with discovery
6 responses. In exchange, Stanly took the motion off calendar.

7 13. On July 28, 2004, Stanly propounded a Second Set of written discovery consisting
8 of interrogatories, requests for admission and requests for production on Martin Hudacko
9 ("Hudacko") and Lopez. On September 2, 2004, Hudacko and Lopez provided responses
10 consisting solely of identical boilerplate objections, without a single substantive response. After a
11 meet and confer process, Lopez provided some substantive responses, however, these responses
12 were still woefully inadequate. In addition, Lopez sought a protective order as to certain
13 discovery (based on trade secret protection) and others he claimed he had already answered
14 appropriately.

15 14. In November of 2004, Lopez moved to appoint a discovery referee. Stanly agreed,
16 and Judge Sarokin was appointed as discovery referee based on the parties' stipulation.

17 15. On January 7, 2005, Stanly submitted to Judge Sarokin a motion to compel the
18 discovery responses of Hudacko and Lopez. On February 18, 2005, Stanly's motion was granted,
19 and Judge Sarokin ordered Lopez to respond to the written discovery requests and produce
20 response documents. The 02/18/2005 ruling of Judge Sarokin was entered as an order of the trial
21 court.

22 16. On March 4, 2005 (the ordered production date), Lopez failed, without justification
23 or excuse, to comply with Judge Sarokin's 02/18/2005 Order by failing to provide any responsive
24 documents to Stanly's requests for production of documents. Stanly made several requests to
25 Judge Sarokin for an additional Order requiring Lopez to produce documents, and for the
26 imposition of sanctions against Lopez. On March 24, 2005, Judge Sarokin issued another Order
27 requiring Lopez to produce all responsive documents on or before March 18, 2005.

28 17. On April 1, 2005, after persistent requests from Stanly's attorneys, and two Orders

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1 from Judge Sarokin, Lopez finally produced approximately 50 pages of additional materials via
2 email. Although Lopez provided some documents, he still failed, without justification or excuse,
3 to provide a video tape and several documents specifically referred to in his discovery responses.
4 Further, Lopez failed to provide audio recordings and a CD ROM purportedly in his possession.

5 18. On April 15, 2005, Stanly filed another motion to compel and request for monetary
6 sanctions against Lopez, requesting, amongst other documents, that the audio recordings be
7 produced. On April 28, 2005, Judge Sarokin granted Stanly's motion and demanded Lopez
8 produce all responsive documents, including the audio recordings and the CD ROM.

9 19. After Judge Sarokin issued the 04/28/2005 Order, Lopez produced some audio
10 recordings, but failed, without justification or excuse, to produce any of the other documents he
11 had been ordered to produce.

12 20. After several repeated requests for production of the missing documentation, Stanly
13 brought another motion to compel before Judge Sarokin. On June 24, 2005, Judge Sarokin
14 granted the motion, and issued evidentiary and monetary sanctions against Lopez in the amount of
15 \$2,000. A true and correct copy of that Order is attached as Exhibit 6 to the Exhibits
16 Compendium.

17 21. On March 8, 2005, Lopez failed, without justification or excuse, to appear for the
18 deposition of Stanly that Lopez had noticed for that day, causing Stanly and his counsel great
19 expense and inconvenience.

20 22. Without justification or excuse, Lopez repeatedly served deposition subpoenas on
21 third parties without providing notice of the Subpoenas to Stanly in an effort to secretly obtain
22 discovery without Stanly's knowledge. Stanly was only made aware of Lopez' failure to provide
23 notice of third party depositions after certain witnesses informed Stanly of the subpoenas. Judge
24 Sarokin issued evidentiary sanctions against Lopez for this conduct in his 06/24/2005 Report.³

25 23. Pursuant to the terms of a protective Order issued by Judge Sarokin, and adopted
26 by the trial court, all parties were ordered to provide declarations detailing their use of corporate
27

28 ³ See, Exhibits Compendium Tab 6.

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1 funds for personal expenses. While Stanly complied with this request, Lopez did not. Lopez's
2 declaration failed, without justification or excuse, to describe his use of corporate funds with any
3 particularity. Stanly was forced to bring another motion before Judge Sarokin, requesting that
4 supplemental declarations be ordered. In his 06/24/2005 Report, Judge Sarokin granted Stanly's
5 motion and Ordered supplemental declarations be produced.⁴

6 24. Lopez refused to stipulate to limit his emotional distress claims pursuant to
7 California Code of Civil Procedure §2032, despite Stanly's repeated requests and Lopez's
8 representations that he would enter into a stipulation. Accordingly, Stanly moved for an Order
9 requiring a medical examination of Lopez. Judge Sarokin issued sanctions against Lopez and his
10 counsel in the amount of \$2,948.75 for their failure to initially stipulate. This ruling is contained
11 in Judge Sarokin's 06/24/2005 Report.⁵

12 25. On October 22, 2004, Stanly served Lopez with a request for a Statement of
13 Damages. Lopez never provided it, despite multiple follow-up requests. Judge Sarokin ordered
14 the Statement served, and Lopez failed to comply with that Order, insisting that the Statement had
15 already been served on Stanly. Judge Sarokin issued monetary sanctions in the amount of \$1,245
16 against Lopez for his failure to comply with his Order. This ruling was also contained in Judge
17 Sarokin's 06/24/2005 Report.⁶

18 *Enterprise Technology Holdings v. Noveon Systems, Inc. et al.*

19 United States District Court for the Southern District of California (Case No.: 05-cv-2236)

20 Case Summary (12/2005 - Present):

21 26. Stanly is the President of Enterprise Technology Holdings, Inc. ("ETH") which
22 filed this action against Noveon Systems, Inc., a company whose common stock is all owned by
23 Mrs. Lopez. ETH successfully obtained a preliminary injunction against Noveon, enjoining
24 Noveon, and all those acting in concert with Noveon, from utilizing, selling, licensing or
25

26 ⁴ See, Exhibits Compendium Tab 6.

27 ⁵ See, Exhibits Compendium Tab 6.

28 ⁶ See, Exhibits Compendium Tab 6.

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1 marketing Prism's software (the company formerly owned by Stanly and Lopez). Thereafter,
2 without any proffered justification or excuse, Noveon simply stopped participating in the
3 litigation. Noveon's counsel admitted his client was not participating in the litigation and, as a
4 result, Noveon's counsel withdrew from the case on January 17, 2007. It appears Lopez decided
5 to stop doing business as Noveon, and let the company take the fall in the case. Lopez left the
6 company with no money, no assets and no appointed officers or elected directors.

7 Although all of the Noveon stock is in his wife's name, Lopez was the company's founder
8 and the person who had managed all the day-to-day operations. The last remaining issue in this
9 case is whether Lopez's wife is an alter-ego of Noveon and thus liable for the company's debts.

10 Summary of Dilatory / Bad Faith Tactics:

11 27. In October of 2006, ETH propounded written discovery on Noveon. Noveon failed
12 and refused to respond to the discovery requests even after multiple meet and confer attempts, and
13 two telephonic conferences with Magistrate Judge Catherine Bencivengo.

14 28. ETH filed a motion for monetary, issue, evidentiary and terminating sanctions
15 against Noveon based on its failure to provide any discovery responses. Noveon failed to oppose
16 the motion. On December 8, 2007, Judge Bencivengo granted ETH's motion and ultimately
17 issued evidentiary, issue and terminating sanctions.

18 29. On August 16, 2007, the Court granted ETH's motion for a default judgment
19 against Noveon. A true and correct copy of that Order is attached as Exhibit 7 to the Exhibits
20 Compendium.

21 LOPEZ'S ALLEGATIONS OF UNFAIR BIAS

22 30. Lopez's apparent *modus operandi* in the Additional Lopez Cases was to allege
23 unfair bias against the judicial officers who issued sanctions or adverse rulings against him.

24 31. In *Union Bank of California v. Francis J. Lopez, et. al.*, Lopez responded to Judge
25 Sarokin's adverse rulings (described above) by failing to pay his portion of Judge Sarokin's
26 referee fees, and filing a motion to disqualify him based on alleged bias. Based on Lopez's
27 allegations, Judge Sarokin resigned rather than respond to the motion. Lopez also alleged that
28 Judge Jacqueline Stern was biased against him. He filed a complaint against Judge Stern with the

1 judicial counsel, and unsuccessfully moved to disqualify her.

2 32. Likewise, in *Francis Lopez v. Alan Stanly*, Lopez responded to Judge Michael
3 Orfield's adverse rulings by alleging he was unfairly biased against him, and moving for
4 disqualification. Judge Orfield voluntarily recused himself, and the case was referred to Judge
5 Thomas Nugent.

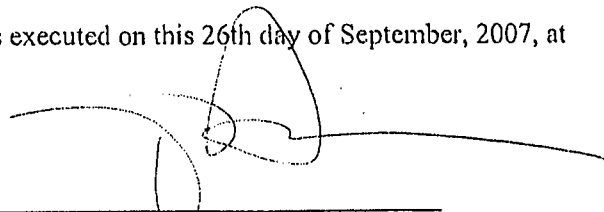
6 **FEES INCURRED FOR PREPARING SUMMARIES RE: LOPEZ'S MISCONDUCT**

7 33. The summaries of the Additional Lopez Cases discussed herein were specifically
8 prepared for Stanly's bankruptcy counsel (Keehn & Associates, APC) by my office in support of
9 Stanly's renewed request for monetary sanctions against Lopez in the above-entitled bankruptcy
10 case. My office spent a total of 6.25 hours compiling the summaries, reviewing past documents,
11 reviewing old case files and finalizing this declaration. Stanly was billed \$1,018.75 for actual
12 legal fees incurred, as set forth below:

13 Attorney Timothy P. Dillon: 1.25 hour (\$215 per hour)

14 Attorney Sunjina Kaur Ahuja: 5.0 hours (\$150 per hour)

15 I declare under penalty of perjury under the law of the United States that the foregoing is
16 true and correct, and that this Declaration was executed on this 26th day of September, 2007, at
17 San Diego, California.

18 
19
20 TIMOTHY P. DILLON
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8 Attorneys for Petitioning Creditors

9 **UNITED STATES BANKRUPTCY COURT**
10 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

11 In Re:

12 FRANCIS J. LOPEZ,
13 Alleged Debtor.

Case No. 05-05926-PBINV

14 **COMPENDIUM OF EXHIBITS IN**
15 **SUPPORT OF RENEWED REQUEST FOR**
16 **AN ENFORCEMENT ORDER IMPOSING**
17 **MONETARY SANCTIONS AGAINST**
18 **ALLEGED DEBTOR FRANCIS J. LOPEZ**

19 **[BIFURCATED PHASE II]**

20 Date: October 1, 2007 (Status Conference)
21 Time: 10:30 a.m.
22 Judge: The Honorable Peter W. Bowie
23 Ctrm: 4

24 **TO: THE HONORABLE PETER W. BOWIE, UNITED STATES BANKRUPTCY**
25 **JUDGE:**

26 Petitioning Creditors respectfully submit the following Compendium of Exhibits in support
27 of their renewed request for an enforcement order imposing monetary sanctions against alleged
28 debtor Francis J. Lopez.

///

///

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0304

EXHIBIT NUMBER	DESCRIPTION
1	Declaration re: Non-Readiness for Trial; Request for Continuance Based Thereupon (dated July 1, 2004).
2	Minute Order (dated July 9, 2004).
3	Declarations of Joseph Fischbach, Francis Lopez, Mark Bohn, Kevin Klein, and Dr. Abelly re OSC (service date: July 14, 2004).
4	Ex Parte Application to Continue Trial Date; Memorandum of Points and Authorities; Supporting Declarations (dated September 7, 2004).
5	Minute Order (dated September 9, 2004).
6	Notice of Ruling (dated September 1, 2005)
7	Order (1) Striking Defendant Noveon Systems Inc.'s Answer and Counterclaims and (2) Entering Default Judgment Against Defendant Noveon Systems Inc. (dated April 11, 2007)

Dated: September 25, 2007

KEEHN & ASSOCIATES
A Professional Corporation

By: //s// L. Scott Keehn
L. Scott Keehn
Attorneys for Petitioning Creditors

KEEHN & ASSOCIATES, APC
ATTORNEYS AND COUNSELORS AT LAW

402 WEST BROADWAY, SUITE 1210
SAN DIEGO, CALIFORNIA 92101

TELEPHONE (619) 400-2200 • FACSIMILE (619) 400-2201

0305

EXHIBIT 1

0306

1 JOSEPH S. FISCHBACH, ESQ. - SBN 70830
2 FISCHBACH & FISCHBACH
3 A Law Corporation
4 9595 Wilshire Blvd., Suite 410
5 Beverly Hills, California 90212
6 Telephone: (310) 278-4015
7 Facsimile: (310) 278-2894

8 Attorneys for Francis Lopez

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11 UNION BANK OF CALIFORNIA, N.A., a
12 National Banking Association

13 Plaintiff,

14 vs.

15 FRANCIS J. LOPEZ, ALAN STANLY and
16 DOES I through DOES IV, inclusive

17 Defendants.

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19 AND RELATED CROSS-ACTION
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CASE NO. GIN 030827

DECLARATION RE: NON READINESS
FOR TRIAL; REQUEST FOR
CONTINUANCE BASED THEREUPON

TRIAL READINESS CONFERENCE

DATE: July 2, 2004

TIME: 10:50
830 a.m.

PLACE: Dept. 27

Trial Date: July 12, 2004

V:\Lopez\union bank\Law and Motion\Trial Readiness.wpd

DECLARATION RE: TRIAL
READINESS 0307

DECLARATION OF JOSEPH FISCHBACH

I, Joseph S. Fischbach, say and declare as follows:

1. That I am an attorney at law, duly licensed to practice in the State of California, and I am the attorney for Plaintiff's and Cross defendant's herein and as such, make this declaration from facts within my personal knowledge and if called upon to testify could so competently testify thereto.

2. That as the Court file will reflect, this Court initially refused to consider an opposition to the motion to confirm good faith settlement. That resulted in the filing of a petition for writ of mandate, and a complaint to the Commission on Judicial Performance, and later in the filing of a statement of disqualification for apparent bias against this Court.

3. In addition to which there was an Ex Parte application filed for an order shortening time to transfer the matter to Department 28, which was denied. The statement of disqualification was originally filed on - blank, but had the wrong caption and was later re-filed on blank. Pursuant to Code of Civil Procedure sections 170.1 and 170.3, the filing of the statement of disqualification divested the trial court of jurisdiction to proceed. I therefore stopped working on this matter. I was informed of the Court's extended vacation in June and that the Court would not return until approximately July 1st. We therefore tried to serve the statement upon the trial court on June 30th. The attorney service informed us that the Court was dark on June 30th in the afternoon, so we called the department in the morning of July 1st and were informed that an order was signed on Monday striking the Statement. We have not received formal notice, nor a copy, in the mail. Therefore we are not prepared to proceed with a trial readiness conference.

4. We believe that under the Code of Civil Procedure Section 170(4), the Court may not strike the statement of disqualification since it clearly states grounds under Code of Civil Procedure Section 170.1 (5)(c) "a person aware of the facts might

V:\Lopez\union bank\Law and Motion\Trial Readiness.wpd

1 reasonably entertain a doubt that the judge would be able to be impartial." My client
 2 has filed a complaint with the Commission on Judicial Performance contending that the
 3 trial court abdicated its judicial responsibility to do justice between the parties by failing
 4 to read the opposition to the motion to confirm good faith settlement merely because it
 5 arrived on the morning after it was due. No reasonable person could assume that the
 6 filing of a complaint with the Commission on Judicial Performance would not prejudice
 7 the trial court. Therefore my client has instructed me to file another petition for writ of
 8 mandate concerning the Court's striking of the statement of disqualification under Code
 9 of Civil Procedure Section 170.4 I have not yet even seen the minute order. We are
 10 attempting to locate the minute order and I can be more specific at that time.

11 5. I respectfully request a 60 day continuance of this conference. Indeed,
 12 am surprised that Mr. Stanly is not going to take the 5th amendment rather than testify
 13 because of his recent arrest on felony invasion of privacy charges stemming from his
 14 working relationship at Prism. He has asked and received a vacation of the currently
 15 pending trial date in Lopez v. Stanly in Department 28, and this matter is inextricably
 16 intertwined, as reflected in the Ex Parte. If the court denies the continuance of this
 17 conference for 60 days, than I would respectfully request that the Court take judicial
 18 notice of the Declaration of Francis Lopez submitted in opposition to the motion for good
 19 faith settlement and deem that to be our statement of facts for purposes of the trial, and
 20 that the Court use the exhibits attached thereto as our Exhibits for trial.

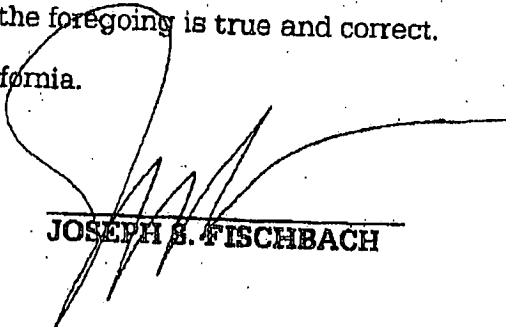
21 6. I am currently scheduled to begin a jury trial in Department WE "O", Santa
 22 Monica, on July 7th have every reason to believe that the trial will in fact go forward.

23 7. That I did not receive the proposed joint statement from Mr. Dillon until
 24 9:09 a.m. on July 1st. That I was in a final status conference in Department 16 of the Los
 25 Angeles Superior Court at that time and did not return to my office until approximately
 26 12:15 p.m.. I dropped everything I was doing to attend to the report, and fell back to
 27 Mr. Dillon. A true and correct copy of my response is attached hereto as Exhibit One.
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0309

V:\Lopez\union bank\Law and Motion\Trial Readiness.wpd

1 I declare under the penalty of perjury that the foregoing is true and correct.
2 Executed July 1, 2004 at Beverly Hills, California.
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JOSEPH B. FISCHBACH

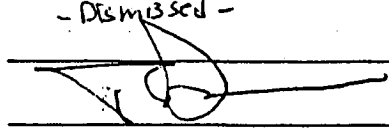
0310

EXHIBIT 2

0311

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CALENDAR NO. 6

NUMBER GIN030827	COMPLAINT DATE 06/26/03	HEARING DATE 07/09/04	HEARING TIME 08:30AM	DEPT 27	F COURT USE ONLY D Clerk of the Superior Court JUL 09 2004 By: P. GARCIA, Deputy
JUDGE/COMMISSIONER HON. JACQUELINE M. STERN		CLERK PHYLLIS GARCIA			
REPORTER <i>not reported</i>		CSR #			
P.O. BOX 120128, SAN DIEGO, CA 92112-0128					
PLAINTIFF/PETITIONER UNION BANK OF CALIFORNIA N A		DEFENDANT/RESPONDENT FRANCIS J LOPEZ ,et al.			
The above matter came on for hearing with the below appearances for:					
TRIAL					
ATTORNEY OF RECORD		PHONE		APPEARANCE BY	
JEFFREY ISSACS (P)		619-238-1900		<i>- Dismissed -</i>	
TIMOTHY P. DILLON (D)		958-259-2529			
JOSEPH S. FISCHBACH (D) <i>no appearance</i>		310-278-4015			
(add'l signatures - use attached sheet)					

IT IS ORDERED AS FOLLOWS:

7/16/04 - 8:30 am
OSC to atty Fischbach - re non appearance
at trial call & why he should not
be sanctioned for his non appearance
today

Trial call also set for this date -
and atty Fischbach is personally
ordered to appear at OSC & trial call
on 7/16/04 - 8:30 am.

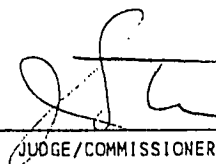
atty Dillon will fax serve today a
copy of this minute order

ESTIMATED TRIAL TIME: _____ day(s).

JURY / NON-JURY

☐ Ordered dismissed with _____ without _____ prejudice.

IT IS SO ORDERED:

Dated: 07/09/04


JUDGE/COMMISSIONER OF THE SUPERIOR COURT

JACQUELINE M. STERN 0312

EXHIBIT 3

0313

1 JOSEPH S. FISCHBACH, ESQ. - SBN 70830
2 FISCHBACH & FISCHBACH
3 A Law Corporation
4 9595 Wilshire Blvd., Suite 410
5 Beverly Hills, California 90212
6 Telephone: (310) 278-4015
7 Facsimile: (310) 278-2894

8 Attorneys for Francis Lopez

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11 UNION BANK OF CALIFORNIA, N.A., a
12 National Banking Association

13 Plaintiff,

14 vs.

15 FRANCIS J. LOPEZ, ALAN STANLY and
16 DOES I through DOES IV, inclusive

17 Defendants.

18
19 AND RELATED CROSS-ACTION
20

) CASE NO. GIN 030827

) DECLARATIONS OF JOSEPH
) FISCHBACH, FRANCIS LOPEZ MARK
) BOHN, KEVIN KLEIN AND DR.
) ABELLY RE OSC

) DATE: July 16, 2004

) TIME: 8:30 A.M.

) PLACE: Dept 27

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DECLARATION OF JOSEPH FISCHBACH

I, Joseph S. Fischbach, say and declare as follows.

1. That I am an attorney at law duly licensed to practice and practicing in the State of California and am the attorney for Francis Lopez, Cross-Defendant herein. As such, I make this declaration from facts within my personal knowledge and if called upon to testify could and would competently testify thereto.

2. That I attach hereto and incorporated by this reference a copy of a Court Order to Show Cause Re Sanctions that has been set for July 16, 2004, marked as Exhibit 1.

3. That on July 1, 2004 I asked Robert Gaglione to make the appearance for me at the Trial Readiness Conference, and filed a Declaration of Non-Readiness. A copy of my Declaration is attached hereto and marked as Exhibit 2. The Court reviewed the Declaration, and denied any request to continue the trial and ordered the matter on its normal program. A July 8 telephone conference was scheduled at which time we were to report in to determine availability of the Courtroom.

4. On July 2, 2004 Mr. Gaglione advised the Court that I was scheduled to start a jury trial on July 7 in Santa Monica. Mr. Gaglione informed me that the Court acknowledged the comment at that time.

5. We were ordered to telephone in on July 8, 2004. On July 6, 2004 I answered ready in Santa Monica and we began a jury trial. I attach copies of the Minute Orders so reflecting, marked collectively as Exhibit 3.

6. On July 8 we called in to the Clerk in Department 27 and informed her that I was engaged. Apparently the Court instructed her clerk to call Santa Monica and verify that I was actually engaged, and the clerk in Santa Monica, Judith Citron informed me that she spoke with this Court's clerk and so confirmed and confirmed that we would be continuing on Friday. My Trial Judge, the Hon. Richard Neidorf, will also so verify.

7. I was advised on July 8 to notify Mr. Dillon the opposing counsel that we were engaged, but for some reason the Court demanded my presence on July 9, despite

1 the fact that I was engaged. I have been a practicing trial lawyer for nearly 30 years, and
2 did not understand why that was to take place but nevertheless in compliance with the
3 Court Order I instructed my office staff to contact Mr. Gaglione and confirm that he
4 would attend the hearing. I was told by my office staff that that had been taken care of.

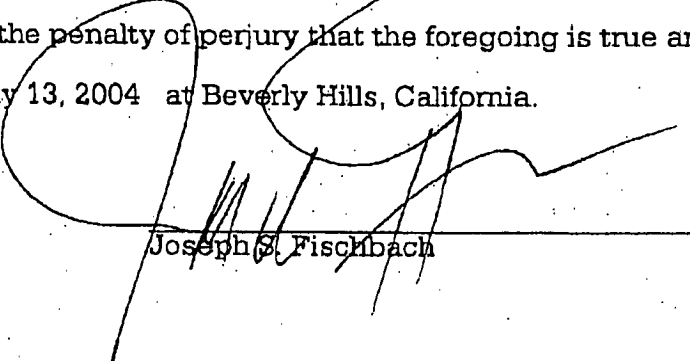
5 8. I was in trial and out of touch, and was never informed that there was a
6 problem. I now understand that Mr. Gaglione asked for a retainer and Mr. Lopez called
7 Gaglione directly to confirm the arrangement, and left a message. Apparently Mr.
8 Gaglione did not return the call to Mr. Lopez and no one advised my office.

9 9. On July 9 while I was in trial I was informed by my paralegal that in fact
10 what I have recited above occurred and that an OSC re: Sanctions had been set because
11 of it.

12 10. I submit this declaration in advance of the OSC so the Court will have a
13 record of what happened.

14 I declare under the penalty of perjury that the foregoing is true and correct.

15 Executed on July 13, 2004 at Beverly Hills, California.

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18 Joseph S. Fischbach
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0316

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

NUMBER GIN030827		COMPLAINT DATE 06/26/03	HEARING DATE 07/09/04	HEARING TIME 08:30AM	DEPT 27	CALENDAR NO. 6
JUDGE/COMMISSIONER HON. JACQUELINE M. STERN			CLERK PHYLLIS GARCIA		F COURT USE ONLY D Clerk of the Superior Court JUL 09 2004 By: P. GARCIA, Deputy	
REPORTER <i>not reported</i>			CSR #			
P.O. BOX 120128, SAN DIEGO, CA 92112-0128						
PLAINTIFF/PETITIONER UNION BANK OF CALIFORNIA N A			DEFENDANT/RESPONDENT FRANCIS J LOPEZ et al.			
The above matter came on for hearing with the below appearances for:						
TRIAL						
ATTORNEY OF RECORD		PHONE		APPEARANCE BY		
JEFFREY ISSACS (P)		619-238-1900		- Dismissed -		
TIMOTHY P. DILLON (D)		858-259-2529				
JOSEPH S. FISCHBACH (D) <i>no appearance</i>		310-278-4015				
(add'l signatures - use attached sheet)						

IT IS ORDERED AS FOLLOWS:

7/16/04 - 8:30 am
OSC To Atty Fischbach - re no appearance
at trial call & why he should not
be sanctioned for his no appearance
today
Trial will also set for this date -
and Atty Fischbach is personally
ordered to appear at OSC & trial call
on 7/16/04 - 8:30 am.
Atty Dillon will fax serve today a
copy of this Minute Order.

ESTIMATED TRIAL TIME: _____ day(s).

JURY / NON-JURY

☐ Ordered dismissed with _____ without _____ prejudice.

IT IS SO ORDERED:

Dated: 07/09/04

JUDGE/COMMISSIONER OF THE SUPERIOR COURT

SUPCT CIV-705 (Rev. 2-98)

GEN-MINUTES/ORDER OF THE COURT

JACQUELINE M. STERN

WEINTRAUB DILLON

JUL 9 2004 9:16AM

0318

EXHIBIT 2

0319

1 JOSEPH S. FISCHBACH, ESQ. - SBN 70830
2 FISCHBACH & FISCHBACH
3 A Law Corporation
4 9595 Wilshire Blvd., Suite 410
5 Beverly Hills, California 90212
6 Telephone: (310) 278-4015
7 Facsimile: (310) 278-2894

8 Attorneys for Francis Lopez

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN DIEGO

11 UNION BANK OF CALIFORNIA, N.A., a
12 National Banking Association

13 Plaintiff,

14 vs.

15 FRANCIS J. LOPEZ, ALAN STANLY and
16 DOES I through DOES IV, inclusive

17 Defendants.

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19 AND RELATED CROSS-ACTION
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) CASE NO. GIN 030827

) DECLARATION RE: NON READINESS
) FOR TRIAL; REQUEST FOR
) CONTINUANCE BASED THEREUPON

) TRIAL READINESS CONFERENCE

) DATE: July 1, 2004

) TIME: 830 a.m.

) PLACE: Dept. 27

) Trial Date: July 12, 2004

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DECLARATION OF JOSEPH FISCHBACH

I, Joseph S. Fischbach, say and declare as follows:

1. That I am an attorney at law, duly licensed to practice in the State of California, and I am the attorney for Plaintiff's and Cross defendant's herein and as such, make this declaration from facts within my personal knowledge and if called upon to testify could so competently testify thereto.

2. That as the Court file will reflect, this Court initially refused to consider an opposition to the motion to confirm good faith settlement. That resulted in the filing of a petition for writ of mandate, and a complaint to the Commission on Judicial Performance, and later in the filing of a statement of disqualification for apparent bias against this Court.

3. In addition to which there was an Ex Parte application filed for an order shortening time to transfer the matter to Department 28, which was denied. The statement of disqualification was originally filed on - blank, but had the wrong caption and was later re-filed on blank. Pursuant to Code of Civil Procedure sections 170.1 and 170.3, the filing of the statement of disqualification divested the trial court of jurisdiction to proceed. I therefore stopped working on this matter. I was informed of the Court's extended vacation in June and that the Court would not return until approximately July 1st. We therefore tried to serve the statement upon the trial court on June 30th. The attorney service informed us that the Court was dark on June 30th in the afternoon, so we called the department in the morning on July 1st and were informed that an order was signed on Monday striking the Statement. We have not received formal notice, nor a copy, in the mail. Therefore we are not prepared to proceed with a trial readiness conference.

4. We believe that under the Code of Civil Procedure Section 170(4), the Court may not strike the statement of disqualification since it clearly states grounds under Code of Civil Procedure Section 170.1 (5)(c) "a person aware of the facts might

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2 has filed a complaint with the Commission on Judicial Performance contending that the
3 trial court abdicated its judicial responsibility to do justice between the parties by failing
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5 arrived on the morning after it was due. No reasonable person could assume that the
6 filing of a complaint with the Commission on Judicial Performance would not prejudice
7 the trial court. Therefore my client has instructed me to file another petition for writ of
8 mandate concerning the Court's striking of the statement of disqualification under Code
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10 attempting to locate the minute order and I can be more specific at that time.

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12 am surprised that Mr. Stanly is not going to take the 5th amendment rather than testify
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14 working relationship at Prism. He has asked and received a vacation of the currently
15 pending trial date in Lopez v. Stanly in Department 28, and this matter is inextricably
16 intertwined, as reflected in the Ex Parte. If the court denies the continuance of this
17 conference for 60 days, than I would respectfully request that the Court take judicial
18 notice of the Declaration of Francis Lopez submitted in opposition to the motion for good
19 faith settlement and deem that to be our statement of facts for purposes of the trial, and
20 that the Court use the exhibits attached thereto as our Exhibits for trial.

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22 Monica, on July 7th have every reason to believe that the trial will in fact go forward.

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25 Angeles Superior Court at that time and did not return to my office until approximately
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27 Mr. Dillon. A true and correct copy of my response is attached hereto as Exhibit One.
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I declare under the penalty of perjury that the foregoing is true and correct.
Executed July 1, 2004 at Beverly Hills, California.

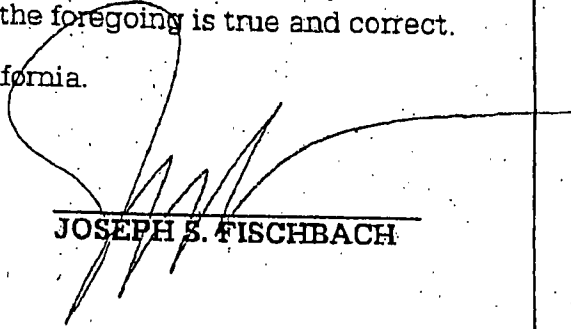

JOSEPH S. FISCHBACH

EXHIBIT 3

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/08/04

HONORABLE RICHARD NEIDORF

HONORABLE

NONE

JUDGE

JUDGE PRO TEM

Deputy Sheriff

DEPT. WE O

J. CITRON

N. ESTRADA CSL/CT ASST.

DEPUTY CLERK

ELECTRONIC RECORDING MONITOR

C. RODRIGUEZ CSR #7763

Reporter

10:30 am

SC078617

MARTIN GUBB

VS

RONALD H. SEMLER ET. AL.

Plaintiff

Counsel

BRIAN HANNEMANN

(X)

Defendant

Counsel

JOSEPH FISCHBACH

(X)

ANNETTE PETERFY

(X)

NATURE OF PROCEEDINGS:

CIVIL JURY TRIAL RESUMES;

Trial is called for hearing with all parties, counsel, and jurors present as heretofore.

Outside the presence of the jurors:

Counsel and court confer re additional motions in limine. Defendant's motion in limine 5 to exclude witnesses is found to be moot.

Further Court findings are as reflected in the notes of the official court reporter and incorporated into this minute order herein.

In the presence of the jurors:

Court pre-instructs the jurors.

Counsel make opening statements.

Ronald H. Semler is sworn and testifies for the plaintiff as an adverse witness pursuant to Section 776 of the Evidence Code.

Out of the presence of the jurors:

Defense motion to exclude defendant's felony conviction from the jurors is reheard.

Court's exhibit A (code section of defendant's felony

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST
JAMES H. DEAN, Executive Officer/Clerk
of the Superior Court of the State of
California for the County of Los Angeles.

By J. Citron, Deputy

DEPT. WE O

MINUTES ENTERED
07/08/04
COUNTY CLERK



0325

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/08/04

DEPT. WE O

HONORABLE RICHARD NEIDORF

JUDGE

J. CITRON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

N. ESTRADA CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. RODRIGUEZ CSR #7763

Reporter

10:30 am SC078617

MARTIN GUBB

Plaintiff

Counsel

BRIAN HANNEMANN (X)

VS

RONALD H. SEMLER ET. AL.

Defendant

Counsel

JOSEPH FISCHBACH (X)

ANNETTE PETERFY (X)

NATURE OF PROCEEDINGS:

conviction and date) is marked for identification and made part of the Court's file.

Further Court findings are as reflected in the notes of the official court reporter and incorporated into this minute order herein.

In the presence of the jurors:

Plaintiff's exhibits 19 (fax dated 9/4/01) and 17 (letter dated 9/4/01), 1 (checks from Gubb), 2 (invoice), 6, 7, 8, 9, 10, 11, 12, 13, 14 (each a Schmitz & Associates' invoice), 15 (Chris Nelson and Associates' invoices), 16 (Bruce Malinowski Landscape invoice), 30 (invoice dated 11/8/01), 32, 33, 34, 35, 36, 37, 38 (each an invoice from Saddlerock Ranch) are marked for identification.

Martin Robert Gubb is sworn and testifies on his own behalf.

Out of the presence of the jurors:

Counsel orally stipulate that Court may act as a settlement officer.

In the presence of the jurors:

Defense exhibits 102, 106, 109, 111, 114, 116, 118, 120, 127, 130, 133, 135 (each a fax), 103, 105, 107, 108, 110, 113, 115, 117, 119, 121, 125, 129, 132, 134 (each a letter) are marked for identification.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/08/04

DEPT. WE O

HONORABLE RICHARD NEIDORF

JUDGE

J. CITRON

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

N. ESTRADA CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

C. RODRIGUEZ CSR #7763

Reporter

10:30 am SC078617

MARTIN GUBB

VS

RONALD H. SEMLER ET. AL.

Plaintiff

Counsel

BRIAN HANNEMANN (X)

Defendant

Counsel

JOSEPH FISCHBACH (X)

ANNETTE PETERFY (X)

NATURE OF PROCEEDINGS:

The jurors are admonished and ordered to return.

Later: out of the presence of the jurors:

Plaintiff's exhibits 4-17 are excluded.

Trial is continued to July 9, 2004 at 10:30a.m. in Department WEO.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/07/04

DEPT. WE O

HONORABLE RICHARD NEIDORF

JUDGE

J. CITRON

DEPUTY CLERK

HONORABLE
2

JUDGE PRO TEM

N. ESTRADA CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

B. NEWLANDER CSR #3142

Reporter

9:00 am SC078617

MARTIN GUBB

VS

RONALD H. SEMLER ET. AL.

Plaintiff

Counsel

BRIAN HANNEMANN (X)

Defendant

Counsel

JOSEPH FISCHBACH (X)

NATURE OF PROCEEDINGS:

JURY TRIAL;

Matter is called for hearing.

Counsel announce ready for trial.

Court and counsel confer re trial procedures.

Counsel waive the court reporter during voir dire.

By oral stipulation of counsel, all does and roes are dismissed.

A panel of prospective jurors understand and agree to answer questions re qualifications.

Jury selection commences.

Outside the presence of the prospective jurors:

Court and counsel confer re making any reference to defendant's criminal record to the jury as reflected in the notes of the official court reporter and incorporated into this minute order herein.

In the presence of the jurors and on the record:

Jury selection continues.

By order of the Court the following jurors understand

Page 1 of 2

DEPT. WE O

MINUTES ENTERED
07/07/04
COUNTY CLERK

THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST
JAMES H. DEWIDDEY, Executive Officer/Clerk
of the Superior Court of the State of California for the County of Los Angeles.

By *J. Citron* Deputy



0328

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/07/04

HONORABLE RICHARD NEIDORF

JUDGE

J. CITRON

DEPT. WE O

DEPUTY CLERK

HONORABLE
2

JUDGE PRO TEM

N. ESTRADA CSL/CT ASST.

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

B. NEWLANDER CSR #3142

Reporter

9:00 am

SC078617

Plaintiff

Counsel

BRIAN HANNEMANN (X)

MARTIN GUBB

VS

Defendant

Counsel

JOSEPH FISCHBACH (X)

RONALD H. SEMLER ET. AL.

NATURE OF PROCEEDINGS:

and agree to try the cause:

- | | |
|---------------------|-----------------------|
| 1. Marilee Eils | 7. Andrew Graham |
| 2. Kathleen Marquez | 8. Catherine Tayag |
| 3. Jurg Lang | 9. Zohreh Tehrani |
| 4. Eugene Lew | 10. Carol Eisenberg |
| 5. James Ayres | 11. Harvey Rosenbloom |
| 6. Kurt Frankel | 12. John Tancredi |

By order of the Court Walter Lockhart and Stephen Callahan understand and agree to try the cause as alternate jurors.

The jurors are admonished and order to return.

Trial is continued to June 8, 2004 at 10:30a.m. in Department WEO.

FROM :

FAX NO. : 850 269 1034

Jul. 13. 2004 10:16AM P1

DECLARATION OF FRANCIS J. LOPEZ

I, Francis J. Lopez, say and declare as follows:

1. That I am the cross-defendant in this matter and as such make this declaration from facts within my personal knowledge and if called upon to testify could so competently testify thereto.
2. That on July 8, 2004 I was at home recovering from a recent hospitalization in accordance with the declaration of my emergency room physician attached hereto and incorporated by this reference. That I was on medication and experiencing abdominal pain. I still am.
3. I have been incapacitated since July 3, 2004 when I experienced severe abdominal pain accompanied by a fever. I was taken to the emergency room at Fort Walton Beach Medical Center, Destin, Florida. I spent several hours there and was diagnosed with Diverticulitis, which is an infection and inflammation of the large intestine. While I had trouble with something similar on my right side in the past, I had never had this current problem which is on my left side. I will not be able to travel for trial. I feel exhausted, and any stressful activity is very tiresome and seems to aggravate my pain. Therefore, I will not be able to participate in assisting my attorney in preparing for trial. I am taking Cipro, Darvocet and Flagyll. The side effects of these drugs include nausea and dizziness. If the condition worsens at any time, but especially in the next several weeks, I will need to return to the hospital

FROM :

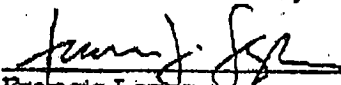
FAX NO. : 850-269-1034

Jul. 13 2004 10:16AM P2

and may have to undergo surgery.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of July at Destin, Florida.


Francis Lopez

DECLARATION OF MARK BOHN

I, Mark Bohn say and declare as follows:

1. That I am a contract paralegal for Fischbach and Fischbach, and as such make this declaration from facts within my personal knowledge and if called upon to testify could so competently testify thereto.

2. That on July 8, 2004 pursuant to instructions from Mr. Fischbach I called the Court in Department 27 and informed the clerk that this office was not ready for trial as Mr. Fischbach was engaged in trial in Santa Monica. I was informed that an appearance was required on July 9, 2004.

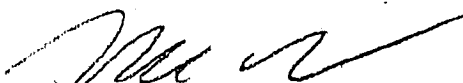
3. That I spoke to Kevin Klein, an employee in this office and asked him to call the law offices of Robert Gaglione and ask him to cover the appearance on July 9, 2004. I later spoke to Kevin and was informed that that had been taken care of.

4. That on July 9, 2004 I called the law offices of Robert Gaglione and spoke with Norma. I asked how things went in court that morning. She informed me that Mr. Gaglione did not make the appearance. She further informed me that she had told Kevin that Mr. Gaglione was booked on July 9th, 2004 but would clear his schedule if Mr. Lopez replenished his retainer and that she needed to know by noon. She also stated that she spoke with Mr. Lopez that day regarding the very same matter. She stated that since she did not hear from our office or receive a wire transfer from Mr. Lopez she did not schedule the Court Hearing.

5. That although I was in Court assisting Mr. Fischbach with his trial, I was in the office from 4 pm until nearly 6:30 p.m. I did not receive a phone call or fax from Mr. Gaglione's office informing me that they would not be appearing.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2004 at Beverly Hills, California.



Mark Bohn

0332

DECLARATION OF KEVIN KLEIN

I, Kevin Klein, say and declare and state as follows:

1. That I am an adult over the age of 18 and as such make this declaration from facts within my personal knowledge and if called upon to testify and will competently testify thereto.

2. I was hired by Fischbach and Fischbach as a filing and office clerk.

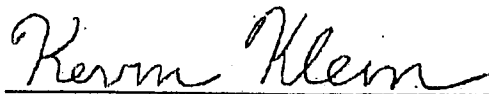
3. That on July 8, 2004 I was given the assignment of coordinating between Francis Lopez and Robert Gaglione, because Mr. Fischbach was engaged in trial. That I called Norma Mr. Gaglione's assistant and asked her to have Mr. Gaglione cover the appearance because Mr. Fischbach was engaged in a jury trial. She relayed back to me that he needed a new retainer. I called Mr. Lopez and he said he would call Mr. Gaglione, and call me back if there were a problem. I did not hear back from anyone before the end of the day and thought everything was covered.

4. That I was not working on July 9, having previously arranged to be out of the office and did not know until my return to the office on July 12 that there had been a problem.

5. Mr. Fischbach did call in and check with me on July 8th and verified that I had accomplished my task, and I told him that the appearance was going to be covered by Mr. Gaglione.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 12, 2004 at Beverly Hills, California:



Kevin Klein

0333

FROM :

FAX NO. : 850 269 1034

JUL 14 2004 09:25AM P2

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DECLARATION OF DR. ABELLY

The undersigned states and declare as follows:

1. That I am a physician duly licensed to practice and practicing in the State of Florida and was the treating physician for Francis Lopez. I state such facts from my personal knowledge and if called upon to testify could so competently testify thereto.

2. That I am employed at the emergency room at Ft. Walton Beach Medical Center in Destin, FL. That on July 3, 2004 Francis Lopez came into the emergency room complaining of severe abdominal pain accompanied by a fever. I attended to him and diagnosed Mr. Lopez with a case of ^{DIVERTICULITIS} Diverticulosis, which is an infection and inflammation of the large intestine.

3. That I prescribed Cipro, Darvocet and Flagyl to stop the infection and for pain relief. The side effects of these drugs may include nausea and dizziness. While on this regimen Mr. Lopez is not able to sustain his ordinary workload and must not be subject to stressful situations. Forcing Mr. Lopez to travel to California and undergo the stress of preparing for and testifying at trial might be injurious to his health. It would not be in accord with good medical advice and could result in an aggravation of his condition and another hospital visit.

4. Mr. Lopez should be reevaluated in the next few weeks, and if his condition has not improved he may require further medical treatment and/or hospitalization.

5. At this time he may be unable to assist his attorney in trial preparation due to his condition. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 13, 2004 at Fort Walton, Florida.

DESTIN,


Andre Abelly, M.D.

PROOF OF SERVICE BY MAIL AND FACSIMILE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action.

My business address is 9595 Wilshire Blvd. Suite 410, Beverly Hills, California, 90067.

On July 14, 2004, I served the foregoing document described as **DECLARATIONS OF JOSEPH FISCHBACH, FRANCIS LOPEZ MARK BOHN, KEVIN KLEIN AND DR. ABELLY RE OSC** in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Timothy Dillon
Weintraub and Dillon
12520 High Bluff Drive
Suite 260
San Diego, CA 92130-2062

X VIA FACSIMILE

X I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

X I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X (State) I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

— (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed under penalty of perjury, under the laws of the United States of America.

Executed under penalty of perjury on July 14, 2004 at Beverly Hills, California.

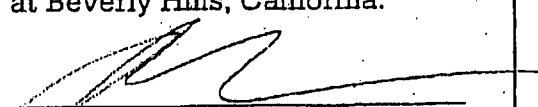

Mark Bohn

EXHIBIT 4

0336

1 JOSEPH S. FISCHBACH, ESQ. SBN 70830
2 FISCHBACH & FISCHBACH
3 A Law Corporation
4 9595 Wilshire Blvd., Suite 410
5 Beverly Hills, California 90212
6 Telephone: (310) 278-4015
7 Facsimile: (310) 278-2894

8 Attorneys for Lopez

9
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**
13

14 UNION BANK OF CALIFORNIA, N.A., a
15 National Banking Association

16 Plaintiff,

17 vs.

18 FRANCIS J. LOPEZ, ALAN STANLY and
19 DOES I through DOES IV, inclusive

20 Defendants

21
22 AND RELATED CROSS-ACTION
23
24

) CASE NO. GIN 030827

) EX PARTE APPLICATION TO
) CONTINUE TRIAL DATE;
) MEMORANDUM OF POINTS AND
) AUTHORITIES; SUPPORTING
) DECLARATIONS

) DATE: September 9, 2004

) TIME: 8:30 a.m.

) PLACE: Dept. 27

) Trial Date: September 13, 2004

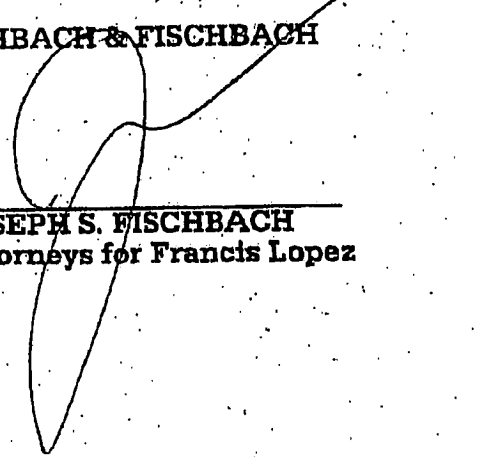
25 COMES NOW Cross-Defendant Francis Lopez and hereby applies to this Court,
26 Ex Parte, for a continuance of the currently pending trial date of September 13, 2004.

27 This application will be based upon California Rule of Court Rule 375(c) on the
28 grounds that Mr. Lopez will be physically unable to assist trial counsel in preparation

1 and to physically attend the trial. Mr. Lopez is a resident of the State of Florida.

2 DATED: September 7, 2004

FISCHBACH & FISCHBACH

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4 By: 
5 JOSEPH S. FISCHBACH
6 Attorneys for Francis Lopez
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

PRELIMINARY STATEMENT

As this Court will recall, the matter was initially set for trial on July 12, 2004. At the time, counsel for Cross-Defendant was engaged in trial in Santa Monica.

In addition, Mr. Lopez suffered a diverticulitis attack which has left him under the care of physicians since that time.

Attached hereto and incorporated by this reference is a true and correct copy of the initial physician diagnosis and report, marked as Exhibit A, and the Court is respectfully requested to take Judicial Notice thereof. Exhibit B is the initial declaration of Mr. Lopez, and again the Court is respectfully requested to take judicial notice. Each of these declarations was previously filed with the Court.

On July 22, 2004, Lopez filed a status report, a true and correct copy of which is attached hereto and marked as Exhibit C.

On August 31 2004, Lopez filed a second status report, a true and correct copy of which is attached as Exhibit D, and the Court indicated that it preferred that Lopez bring an Ex Parte Application to continue, and thus the instant application.

II.

A CONTINUANCE IS APPROPRIATE UNDER THESE CIRCUMSTANCES

California Rule of Court Rule 375(c) governs the continuance of a trial and provides in pertinent part as follows:

(c) [Grounds for continuance] Although continuances of trials are disfavored, each request for a continuance must be considered on its own merits. The court may grant a continuance only upon an affirmative showing of good cause requiring the continuance. Circumstances that may indicate good cause include:

(1) The unavailability of an essential lay or expert witness because of death, illness, or other excusable circumstances;

(2) The unavailability of a party because of death, illness, or other excusable circumstances;

(3) The unavailability of trial counsel because of death, illness, or other excusable circumstances;

(4) The substitution of trial counsel, but only where there is an affirmative showing that the substitution is required in the interests of justice;

(5) The addition of a new party if:

(A) the new party has not had a reasonable opportunity to conduct discovery and prepare for trial, or

(B) the other parties have not had a reasonable opportunity to conduct discovery and prepare for trial in regard to the new party's involvement in the case;

(6) A party's excused inability to obtain essential testimony, documents, or other material evidence despite diligent efforts; or

(7) A significant, unanticipated change in the status of the case as a result of which the case is not ready for trial.[emp]

Attached hereto and incorporated herein by this reference is the subsequent declaration of Mr. Lopez which does contain his currently upcoming medical procedure schedule including a colonoscopy and endoscopy scheduled for September 7, 2004. Because trial is scheduled for September 13, that is exactly the period of time when Mr. Lopez would be required to be in California and assisting in the preparation for trial.

In addition to which he is scheduled for additional testing and as his supplemental declaration attached hereto indicates, he is still on medication which affects his ability to think and he would still be unable to travel to California and effectively participate in the trial.

Request is therefore made that the Court continue trial for a period of 60 days to allow Mr. Lopez to recuperate.

Respectfully Submitted

DATED: September 7, 2004

FISCHBACH & FISCHBACH

By:
JOSEPH S. FISCHBACH
Attorneys for Francis Lopez

SUPPLEMENTAL DECLARATION OF FRANCIS J. LOPEZ

I, Francis J. Lopez, say and declare as follows:

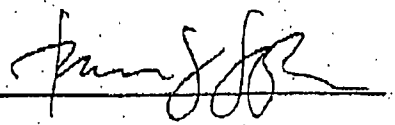
1. That I am the cross-defendant in this matter and as such make this declaration from facts within my personal knowledge and if called upon to testify could so competently testify thereto.

2. That I attach hereto and incorporate by this reference, marked as Exhibit D the declaration that I prepared in support of my status report of August 31, 2004.

3. That I wanted to emphasize for the Court that I am still taking medication for my diverticulitis and am still "groggy" and not able to work full time. That I will not be able to travel to California to assist my attorney in trial preparation because of my medication, and surgical schedule. I request, therefore, that the Court allow me a 60-day continuance. After my testing is done in September my physicians have indicated that they will provide me with an updated report and indicate whether or not I can go off of the medication or whether I need to remain on it and/or have surgery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 7, 2004, at Destin, California.


Francis Lopez

DECLARATION OF MARK BOHN

I, Mark Bohn, state and declare as follows:

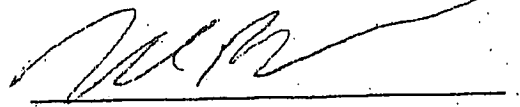
1. That I am a paralegal employed with the law offices of Fischbach & Fischbach and as such make this declaration from facts within my personal knowledge and, if called upon to testify, and could and would competently testify accordingly

2. Attached hereto and incorporated by this reference is a true and correct copy of the initial physician diagnosis and report, marked as Exhibit A, and the Court is respectfully requested to take Judicial Notice thereof. Exhibit B is the initial declaration of Mr. Lopez, and again the Court is respectfully requested to take judicial notice. Each of these declarations was previously filed with the Court. On July 22, 2004, Lopez filed a status report, a true and correct copy of which is attached hereto and marked as Exhibit C. On August 31 2004, Lopez filed a second status report, a true and correct copy of which is attached as Exhibit D.

3. That on September 7, 2004 at 3:56 p.m. I transmitted a fax to Timothy Dillom, counsel for Alan Stanly stating that this office would be appearing, Ex Parte, in Department 28 on September 9, 2004 at 8:30 a.m. there and then seeking a continuance of the trial in this matter currently scheduled for September 13, 2004. A true and correct copy of that fax and its confirmation are attached hereto collectively and marked as Exhibit E.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 7, 2004, at Beverly Hills, California.



Mark Bohn

EXHIBIT A

DECLARATION OF DR. ABELLY

The undersigned states and declare as follows:

1. That I am a physician duly licensed to practice and practicing in the State of Florida and was the treating physician for Francis Lopez. I state such facts from my personal knowledge and if called upon to testify could so competently testify thereto.

2. That I am employed at the emergency room at Ft. Walton Beach Medical Center in Destin, FL. That on July 3, 2004 Francis Lopez came into the emergency room complaining of severe abdominal pain accompanied by a fever. I attended to him and diagnosed Mr. Lopez with a case of ~~Diverticulitis~~ ^{DIVERTICULITIS}, which is an infection and inflammation of the large intestine.

3. That I prescribed Cipro, Darvocet and Flagyl to stop the infection and for pain relief. The side effects of these drugs may include nausea and dizziness. While on this regimen Mr. Lopez is not able to sustain his ordinary workload and must not be subject to stressful situations. Forcing Mr. Lopez to travel to California and undergo the stress of preparing for and testifying at trial might be injurious to his health. It would not be in accord with good medical advice and could result in an aggravation of his condition and another hospital visit.

4. Mr. Lopez should be reevaluated in the next few weeks, and if his condition has not improved he may require further medical treatment and/or hospitalization.

5. At this time he may be unable to assist his attorney in trial preparation due to his condition. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 13, 2004 at Fort Walton, Florida.

DESTIN,

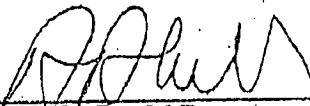

Andre Abelly, M.D.

EXHIBIT B

DECLARATION OF FRANCIS J. LOPEZ

I, Francis J. Lopez, say and declare as follows:

1. That I am the cross-defendant in this matter and as such make this declaration from facts within my personal knowledge and if called upon to testify could so competently testify thereto.
2. That on July 8, 2004 I was at home recovering from a recent hospitalization in accordance with the declaration of my emergency room physician attached hereto and incorporated by this reference. That I was on medication and experiencing abdominal pain. I still am.
3. I have been incapacitated since July 3, 2004 when I experienced severe abdominal pain accompanied by a fever. I was taken to the emergency room at Fort Walton Beach Medical Center, Destin, Florida. I spent several hours there and was diagnosed with Diverticulitis, which is an infection and inflammation of the large intestine. While I had trouble with something similar on my right side in the past, I had never had this current problem which is on my left side. I will not be able to travel for trial. I feel exhausted, and any stressful activity is very tiresome and seems to aggravate my pain. Therefore, I will not be able to participate in assisting my attorney in preparing for trial. I am taking Cipro, Darvocet and Flagyll. The side effects of these drugs include nausea and dizziness. If the condition worsens at any time, but especially in the next several weeks, I will need to return to the hospital

and may have to undergo surgery.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of July at Destin, Florida.

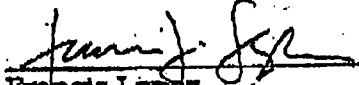

Francis Lopez

EXHIBIT C

1 JOSEPH S. FISCHBACH, ESQ. SBN 70830
2 FISCHBACH & FISCHBACH
3 A Law Corporation
4 9595 Wilshire Blvd., Suite 410
5 Beverly Hills, California 90212
6 Telephone: (310) 278-4015
7 Facsimile: (310) 278-2894

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9 Attorneys for FRANCIS LOPEZ

COMPUTER COPY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

12 UNION BANK OF CALIFORNIA, N.A., a)
13 National Banking Association)

14 Plaintiff,)

15 vs.)

16 FRANCIS J. LOPEZ, ALAN STANLY and)
17 DOES I through DOES IV, inclusive)

18 Defendants)

CASE NO. GIN030827
Assigned to Judge Jacqueline
Stern for all purposes

STATUS REPORT

19 DATE:

20 TIME:

21 AND RELATED CROSS-ACTIONS)

PLACE: Dept 27

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TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to the Court's request for a continuing report on the medical condition of Francis Lopez, Counsel has been informed of the following. On July 13, Dr. Abelly re-evaluated Mr. Lopez and supplied the declaration that was filed with the court. The hospital referred Mr. Lopez to four local gastroenterologists, in order to continue the evaluation. The first was not taking new patients, the second does not

1 have an opening until November, and the third and fourth referrals require that
2 Francis Lopez first be seen by a primary care physician and then referred by the
3 doctor. Mr. Lopez has set up an appointment with the primary care physician on
4 August 4, 2004, the earliest date that he could obtain. From there, he will be referred
5 to one of the two gastroenterologists, and that gastroenterologist will determine
6 whether or not surgery is required.

7 Counsel has been informed that we will be able to provide the Court a further
8 status report on or about August 4, 2004.

9 DATED: July 22, 2004

FISCHBACH & FISCHBACH

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11
12 By: _____
13 JOSEPH S. FISCHBACH
14 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ss

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action.

My business address is 9595 Wilshire Boulevard, Suite 410, Beverly Hills, California 90212.

On July 22, 2004 I served the foregoing document described as **STATUS REPORT**: in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Timothy Dillon
Weintraub and Dillon
12520 High Bluff Drive
Suite 260
San Diego, CA 92130-2062

X I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X (State) I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

— (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed under penalty of perjury, under the laws of the United States of America.

Executed under penalty of perjury on July 22, 2004, at Beverly Hills, California.

Mark Bohn

EXHIBIT D

JOSEPH S. FISCHBACH, ESQ. SBN 70830
 FISCHBACH & FISCHBACH
 A Law Corporation
 9595 Wilshire Blvd., Suite 410
 Beverly Hills, California 90212
 Telephone: (310) 278-4015
 Facsimile: (310) 278-2894

Attorneys for FRANCIS LOPEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO**

UNION BANK OF CALIFORNIA, N.A., a
 National Banking Association

Plaintiff,

vs.

FRANCIS J. LOPEZ, ALAN STANLY and
 DOES I through DOES IV, inclusive

Defendants

**CASE NO. GIN030827
 Assigned to Judge Jacqueline
 Stern for all purposes.**

STATUS REPORT

AND RELATED CROSS-ACTIONS

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

COMES NOW Francis Lopez and hereby submits his status report on his medical condition, pursuant to Court Order.

Mr. Lopez' condition has not sufficiently improved, and he is scheduled to undergo the following testing during the month of September to determine his course of treatment for his disease:

Sept. 1st: Complete blood work

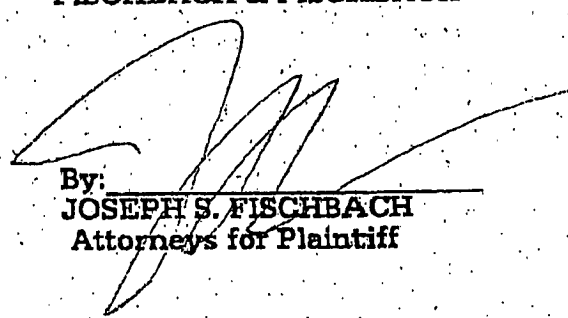
1 Sept. 7th CT Scan abdominal

2 Sept. 13th: Endoscopy and Colonoscopy (Dr. Riggimbach, Emerald Coast
3 Surgery)

4 Based thereupon, Defendant Lopez respectfully requests another 30-day
5 continuance of the Trial and Trial Readiness Conference.

6 DATED: August 30, 2004

FISCHBACH & FISCHBACH

7
8
9 By: 
10 JOSEPH S. FISCHBACH
11 Attorneys for Plaintiff
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DECLARATION OF FRANCIS LOPEZ

I, Francis Lopez, say and declare as follows:

1. That I am the Cross-Defendant in this matter, and as such make this declaration from facts within my personal knowledge and if called upon to testify could so competently testify thereto.

2. That I appreciate the Court's prior courtesy in accommodating me due to my medical condition. My medical condition has not changed in any significant fashion. For example, two nights ago I woke up and experienced an incredibly severe stomach pain for approximately four hours. I am currently scheduled to undergo testing in the month of September, to determine my future course of treatment for my disease as follows:

Sept. 1st: Complete blood work

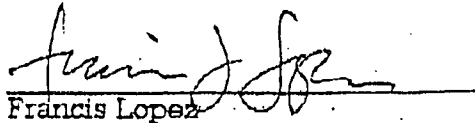
Sept. 7th CT Scan abdominal

Sept. 13th: Endoscopy and Colonoscopy (Dr. Rigginsbach, Emerald Coast Surgery)

3. That I will, therefore, be unable to travel to Los Angeles to either assist my attorney in preparing for trial during the month of September, nor to attend the trial during the month of September. Each time that I am under stress, it exacerbates my condition, and I therefore respectfully request that the court grant me one further 30-day continuance to allow my medical condition to improve so that I can assist my attorney to prepare for trial.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of August at Destin, Florida.


Francis Lopez

PROOF OF SERVICE

STATE OF CALIFORNIA

ss

COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action.

My business address is 9595 Wilshire Boulevard, Suite 410, Beverly Hills, California 90212.

On August 30, 2004 I served the foregoing document described as **STATUS REPORT**: in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Timothy Dillon
Weintraub and Dillon
12520 High Bluff Drive
Suite 260
San Diego, CA 92130-2062

X I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X (State) I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

— (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed under penalty of perjury, under the laws of the United States of America.

Executed under penalty of perjury on August 30, 2004, at Beverly Hills, California.

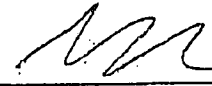

Mark Bohn

EXHIBIT E

0357

Telephone: (310) 278-4015
Facsimile: (310) 278-2894
E-mail: JSF@Fischbachlaw.com

FISCHBACH & FISCHBACH
A Law Corporation
9595 Wilshire Boulevard, Suite 410
Beverly Hills, CA

FAX COVER SHEET

SENT TO: Timothy Dillon
Weintraub and Dillon

FAX NO. 858-259-2868

FROM: Mark Bohn paralegal for Joseph S. Fischbach

DATE: September 7, 2004

RE: Union Bank v. Lopez/Stanly

NUMBER OF PAGES SENT (including cover sheet):

COMMENTS: Dear Mr Dillon:

Please be advised that this office will be appearing Ex Parte in Department 27 of the San Diego Superior Court, Vista Branch on September 9, 2004 at 8:30 a.m there and then to seek a continuance of the trial in the above entitled case. Please let us know whether or not you will be filing any opposition.

IF ALL PAGES WERE NOT RECEIVED OR IF QUALITY IS POOR
PLEASE NOTIFY US AT (310) 278-4015

CONFIDENTIALITY NOTICE
THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION CONTAIN CONFIDENTIAL INFORMATION BELONGING TO THE SENDER WHICH IS LEGALLY PRIVILEGED. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TELECOPY IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE TO ARRANGE FOR RETURN OF THE ORIGINAL DOCUMENTS TO US.

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HP LASERJET 3200

SEP-7-2004 3:58PM

Fax Call Report

Job	Date	Time	Type	Identification	Duration	Pages	Result
846	9/ 7/2004	3:56:14PM	Send	18582592868	0:57	1	OK

1 JOSEPH S. FISCHBACH, ESQ. SBN 70830
2 FISCHBACH & FISCHBACH
3 A Law Corporation
4 9595 Wilshire Blvd., Suite 410
5 Beverly Hills, California 90212
6 Telephone: (310) 278-4015
7 Facsimile: (310) 278-2894

8 Attorneys for Lopez

9
10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN DIEGO**
13

14 UNION BANK OF CALIFORNIA, N.A., a
15 National Banking Association

16 Plaintiff,

17 vs.

18 FRANCIS J. LOPEZ, ALAN STANLY and
19 DOES I through DOES IV, inclusive

20 Defendants

21 AND RELATED CROSS-ACTION

22 CASE NO. GIN 030827

23 DECLARATION OF DR. MARK
24 RIGGENBACH IN SUPPORT OF EX
25 PARTE APPLICATION TO CONTINUE
26 TRIAL

27 DATE: September 9, 2004

28 TIME: 8:30 a.m.

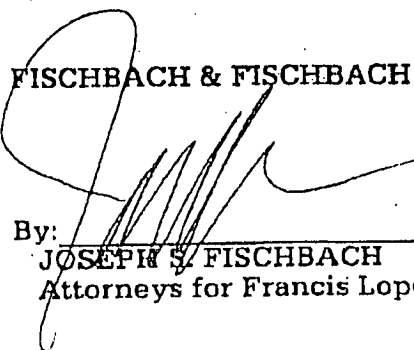
PLACE: Dept. 27

Trial Date: September 13, 2004

29 COMES NOW Cross-Defendant Francis Lopez and hereby respectfully subits the
30 Declaration of Dr. Mark Rigggenbach to supplement his Ex Parte Application to continue
31 the trial.

32 DATED: September 8, 2004

FISCHBACH & FISCHBACH

33 By: 
34 JOSEPH S. FISCHBACH
35 Attorneys for Francis Lopez

FROM :

09/08/2004 10:48 8626148

FAX NO. :850 269 1034

WVMC

Sep. 08 2004 11:02AM P1

PAGE 02

FROM :

FAX NO. :850 269 1034

Sep. 02 2004 09:32AM P2

DECLARATION OF DOCTOR MARK RIGGENBACH

I, Dr. Mark Rigggenbach say and declare as follows:

1. That I am a physician duly licensed to practice and practicing in the State of Florida and am the treating physician for Francis Lopez. I state such facts from my personal knowledge and if called upon to testify could so competently testify thereto.

2. That I am employed in the Gastroenterology Department at White Wilson Medical Center in Ft. Walton Beach, Florida. That Mr. Lopez has been diagnosed with Diverticulosis, which is the cause of Mr. Lopez's recent infection of the large intestine (Diverticulitis).

3. That I have scheduled several diagnostic procedures in the month of September in order to treat his condition. Included among these are a colonoscopy and endoscopy which are scheduled for September 13, 2004. That these procedures are needed to help me determine the proper treatment for Mr. Lopez's condition.

4. That during this time period, Mr. Lopez should not travel and any court appearance should be rescheduled for October or later.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on September 7, 2004 at Fort Walton, Florida.


 Mark Rigggenbach, MD

EXHIBIT 5

0362

EXHIBIT 6

0364

1 Timothy P. Dillon, Esq. (SB# 190839)
2 Sunjina K. Anand, Esq. (SB# 226130)
3 DILLON & SIMONSEN, APC
4 4660 La Jolla Village Dr., Suite 775
San Diego, CA 92122
Telephone: (858) 587-1800
Facsimile: (858) 587-2587

F I L E D
Clerk of the Superior Court

SEP 02 2005

BY: C. KARIMI

5 Attorneys for Defendant, ALAN STANLY

6
7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
9 NORTH COUNTY BRANCH
10

11 FRANCIS LOPEZ, an individual and
12 representative of PRISM ADVANCED
13 TECHNOLOGIES, INC., a California
corporation,

14 Plaintiff,

vs.

15 ALAN STANLY, Prism Advanced Technologies,
16 Inc. and DOES 1-50, inclusive/

17 Defendants.
18

19 ALAN STANLY, an individually and as
20 representative of PRISM ADVANCED
21 TECHNOLOGIES, INC., a California
Corporation,

22 Cross-complainants,

vs.

23 FRANCIS LOPEZ, an individual; MARTIN
24 HUDACKO, an individual; PRISM ADVANCED
25 TECHNOLOGIES, INC., a California
corporation; and ROES 1-50, inclusive,

26 Defendants.
27
28

Case No.: GIN 029692

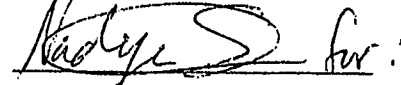
NOTICE OF RULING

1 To Plaintiff and Cross-Defendant, Francis Lopez, and his attorney of record:

2 Please take notice that on August 29, 2005, this Court issued a ruling granting Order Re: III -
3 Report and Recommendation of Discovery Referee. The ruling of the Court is attached hereto as
4 Exhibit "A" and hereby incorporated by reference.
5

6
7
8 Dated: September 1, 2005

DILLON & SIMONSEN, APC



Timothy P. Dillon, Esq.

EXHIBIT A

0367

F I L E D

Clerk of the Superior Court

AUG 29 2005

By: PATRICIA LEAPART, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTH COUNTY BRANCH

FRANCIS LOPEZ, an individual and as
representative of PRISM ADVANCED
TECHNOLOGIES, INC., a California
corporation,

Plaintiff,

vs.

ALAN STANLY, Prism Advanced
Technologies, Inc. and DOES 1-50, inclusive,

Defendants.

CASE NUMBER: GIN 029692

ORDER RE: III - REPORT AND
RECOMMENDATION OF DISCOVERY
REFEREE

ALAN STANLY, an individual,

Cross-Complainant,

vs.

FRANCIS LOPEZ, an individual;
MARTIN HUDACKO, an individual;
JAMES BEARS, an individual; and ROES 2-
50, inclusive.

Cross-Defendants.

0368

1 WHEREAS, on June 30, 2005 involuntary bankruptcy proceedings were initiated against
2 Plaintiff and Cross-Defendant, Francis Lopez ("Lopez"). Due to the bankruptcy, all claims and
3 actions against Lopez are stayed, whereas as all claims and actions asserted by Lopez and/or against
4 Plaintiff and Cross-Defendant, Martin Hudacko ("Hudacko") and Defendant and Cross-Complainant,
5 Alan Stanly ("Stanly") are not stayed.

6
7 WHEREAS, on June 24, 2005, the Discovery Referee, Hon. Lee Sarokin, submitted the III-
8 Report and Recommendation of Discovery Referee on Pending Discovery and Sanctions Motion (the
9 "Report and Recommendations III"), imposing both monetary and exclusionary sanctions against
10 Plaintiffs, Lopez and Hudacko and Plaintiffs' counsel attached hereto as Exhibit "A".

11 WHEREAS, to the extent the Report and Recommendation -- III applies to Hudacko, Lopez
12 and Hudacko's counsel, and claims asserted by Plaintiffs against Stanly, it is not stayed and shall be
13 entered into order.

14
15 NOW THEREFORE, after consideration of the Report and Recommendation -- III, Plaintiffs'
16 Objections to Report of Discovery Referee, Alan Stanly's Response to Plaintiffs' Objection to Report
17 of Discovery Referee and good cause appearing therefore, the Court enters the following orders:

- 18 1. Sanctions are awarded in favor of defendants and against Hudacko in the amount of
19 \$1,500 due and payable within ten (10) days of the date of this Order.
- 20 2. Plaintiffs are directed to file a declaration within fifteen (15) days of the date of this
21 order, representing that they have complied with all outstanding discovery requests.
- 22 3. Sanctions are awarded to defendants and against Fischbach & Fischbach in the amount
23 of \$3,698.75, due and payable within ten (10) days of the date of this order.
- 24 4. Plaintiffs shall be precluded from the offering at trial of any audio recordings that have
25 not been furnished to defendants on or before June 24, 2005.
- 26 5. Plaintiffs are precluded from offering at trial any such documents which have not
27
28

1 heretofore been produced via the deposition subpoena for production of documents served on
2 Microsoft, Inc. Plaintiffs are directed to give proper notice of all deposition subpoenas in the future,
3 and failing same, plaintiffs shall be precluded from offering any documents so procured.

4 6. Each party, within ten (10) days, is to supplement their previously submitted
5 declaration regarding their use of Prism Advanced Technologies, Inc. ("Prism") funds for personal or
6 non-Prism business. Should the parties fail to adequately describe their transactions, monetary
7 sanctions shall be issued.

8
9 7. The recommended ruling of the discovery referee regarding the CD-ROM illustrating
10 Lopez's contributions to Prism's technology affects Stanly's claims against Lopez, and is thus stayed
11 and will be ruled upon by this court at a later time.

12 8. The recommended ruling of the discovery referee regarding the monetary sanctions
13 against Lopez is stayed and will be ruled upon by this court at a later time.

14
15 9. Deposition schedule: The parties are directed to prepare and file a deposition schedule
16 within fifteen (15) days for the remaining depositions. Once established, no deposition shall be
17 adjourned except for the illness of counsel, or the witness, without the prior consent of the referee or
18 the Court or the written consent of counsel. Counsel are directed not to accept any other client or
19 business assignments that conflict with the deposition schedule.
20

21
22 IT IS SO ORDERED

23 MICHAEL B. ORFIELD

24 Dated: August ²⁹, 2005

25 Hon. Michael B. Orfield
26 Judge of the Superior Court
27
28

EXHIBIT A

0371

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

FRANCIS LOPEZ, individually and as
Representative of Prism Advanced Technologies,
Inc., a California Corporation, PLAINTIFF

CASE NO. GIN029692

Judge Richard G. Cline

III - REPORT AND
RECOMMENDATION OF
DISCOVERY REFEREE ON
PENDING DISCOVERY and
SANCTIONS MOTIONS

vs.

ALAN STANLY, Prism Advanced
Technologies, Inc. and DOES 1 through 50 inclusive.
DEFENDANTS

The undersigned respectfully submits the following report and recommendation
for the Court's consideration:

Defendants again move for evidentiary and/or monetary sanctions against the
plaintiffs. I had previously recommended reserving on the sanctions to be imposed in the
hope that holding the sword over the heads of counsel would encourage them to end their
bickering and accusations, but to no avail. They are unable to agree as to any matter or
fact. Indeed, their respective motions are peppered with charges of fraud and
misrepresentation against each other. The motions are accompanied by wholesale
reproductions of exhibits and pleadings (most of which have been previously submitted)

with no effort to cull out what is particularly relevant to the pending motions.

Notwithstanding the voluminous submissions, I will attempt to address each of the assertions made.

A. Plaintiffs' Refusal to Answer Initial Round of Written Discovery

It is undisputed that plaintiffs failed to make any response to defendants' initial demands and was sanctioned for such failure.

B. Second Round of Written Discovery

a. Production of Documents

I will not attempt to recite the history outlined by defendants of plaintiffs' failures to comply with discovery requests. Despite some minor differences in that history asserted by plaintiffs, it is clear that plaintiffs repeatedly and consistently failed to comply in the face of relentless and persistent pursuit by the defendants, necessitating numerous letters and motions to compel compliance. Even as of this date, I cannot determine whether or not there has been full compliance. Some of the remaining issues are discussed below.

Sanctions are awarded in favor of the defendants and against the plaintiffs in the amount of \$2000, and plaintiffs are directed to file a declaration within 5 days representing that they have complied with all outstanding discovery requests.

b. Audio recordings

According to defendants, plaintiffs admit being in possession of 33 audio recordings which support their eavesdropping claim against the defendants. Despite repeated requests and subpoenas, no audio recordings have been produced by plaintiffs. (This dispute continues notwithstanding the fact that apparently defendant Stanly has

admitted and was convicted of such eavesdropping.)

Plaintiffs shall be precluded from offering at trial any audio recordings that have not been furnished to defendants as of this date.

c. Hudacko videotape

The subject video tape apparently is in the possession of the police, and thus cannot be turned over by Mr. Hudacko.

Plaintiffs are directed to make all reasonable efforts to obtain said video and provide a copy of same to defendants, if obtained. Plaintiffs shall outline such efforts to defendants' counsel in writing.

D. CD ROM

The parties dispute whether or not the CD-ROM illustrating Mr. Lopez's contributions to the Prism technology has been produced.

If the CD-ROM has not been furnished to defendants, then plaintiffs shall be precluded from offering same at the trial of this matter.

C. Depositions

a. Refusal to Appear for Depositions

Defendants set forth their long history in attempting to take the deposition of Mr. Lopez and recite the incident of April 11, 2005, with which I have previously dealt. Here again, the evidence is clear that despite repeated attempts to arrange the deposition of Mr. Lopez, it finally took place for 2 hours, only after an order and in the presence of the Referee.

The rulings on this matter have been set forth in prior reports.

b. Refusal to Answer Questions at Depositions

I am unaware of the status of this issue and whether it has been resolved by the "meet and confer" correspondence, although, in view of the history case, it is unlikely. No ruling will be made at this time.

D. Statement of damages

This is a particularly troubling matter and raises serious ethical questions in view of the charges and counter-charges made by counsel. Defendants made a request for the statement on Oct. 22, 2004. Defendants claim that no statement has ever been served, until the opposition to these motions was filed. Plaintiffs have attached a statement and proof of service dated Nov. 30, 2004. Plaintiffs claim that the motion of defendants in regard to this matter is "intentionally fraudulent" and "the best example of perfidy of this alleged motion". Yet, in response to defendants' motion to furnish a statement of damages, no assertion was made that such a statement had been prepared and served. Indeed, although plaintiffs assert that no effort was made to obtain the statement after November of 2004 (thus proving its receipt), defendants moved to compel it and an order was entered compelling plaintiffs to furnish such a statement on April 28, 2005. Even subsequent to the order, plaintiffs did not assert that they had already complied.

On June 23, 2005, I directed counsel to advise me whether or not there had been any prior correspondence or declarations from plaintiffs that such a statement had been prepared and served. Counsel for plaintiffs insists that the statement was served in November of 2004, but offers no reason why that assertion was not made in opposition to prior motions to compel it. Counsel for defendants re-asserts that he never received the statement of damages on any prior occasion and that plaintiffs never claimed that they had sent it in response to letters or motions demanding it and the order directing that it be

supplied.

Even if plaintiffs furnished the statement of damages and defendants, for some reason, had not received it, plaintiffs failed to advise that they had done so, despite requests and motions by defendants and the April 28, 2005, order of the referee that it be produced.

Sanctions are awarded to defendants and against plaintiffs' counsel in the amount of \$1245.

E. Notice of Deposition Subpoenas for Production of Documents on Third Party

Defendants claim that plaintiffs subpoenaed documents from Microsoft and no notice was served upon defendants. Although plaintiffs do not deny the failure to serve notice (notwithstanding that they charge that the claim is "frivolous" and "fraudulent"), those documents were subsequently transmitted to defendants so that any harm from the failure to notify has been cured. However, defendants insist that not all of the documents have been produced.

Plaintiffs are precluded from offering at trial any such documents which have not heretofore been produced.

As to the depositions of Mr. Ling and Mr. Jamieson, plaintiffs gloss over but do not deny the failure to give defendants notice, but argue that no harm has resulted.

Plaintiffs are directed to give proper notice in the future, and failing same, plaintiffs shall be precluded from offering any documents so procured.

F. Sanctions for Independent Medical Exam

I have already ruled upon this matter and reserved as to the sanction to be imposed.

Defendants are awarded sanctions against plaintiffs' counsel in the sum of

\$2,948.75

G. Declaration re Prism Expenditures

The parties were directed to file declarations regarding their use of Prism funds for personal or non-Prism business. Both have filed such declarations. Whether or not they are true and complete cannot be determined. To the extent either party has failed to comply, sanctions would be warranted.

Each party is granted 10 days to supplement said declarations. If either party fails to fully disclose such transactions, then monetary sanctions shall be imposed.


H. Deposition Schedule

The parties were and are directed to prepare and file a deposition schedule within 5 days for the remaining depositions. (I do not know whether or not the existing stipulation is usable.) Once established no deposition shall be adjourned except for the illness of counsel or the witness without the prior consent of the referee or the court or the written consent of counsel. Counsel are directed not to accept any other client or business assignments that conflict with the deposition schedule.

I. Procedural objections

The objections to the pending motions on procedural grounds are rejected.

Respectfully submitted:


H. Lee Sarokin, Discovery Referee
This 24 day of June, 2005

The report and recommendations of the Referee are hereby approved and adopted;
SO ORDERED this _____ day of _____ 2005

Richard C. Cline,
Judge of the Superior Court

1 Timothy P. Dillon, Esq. (SB# 190839)
Sunjina K. Anand, Esq. (SB# 226130)
2 DILLON & SIMONSEN, APC
4660 La Jolla Village Dr., Suite 775
3 San Diego, CA 92122
Telephone: (858) 587-1800
4 Facsimile: (858) 587-2587

5 Attorneys for Defendant, ALAN STANLY

FILED
Clerk of the Superior Court
SEP 02 2005
JVC: KARIMI

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
9 NORTH COUNTY BRANCH

11 FRANCIS LOPEZ, an individual and
representative of PRISM ADVANCED
12 TECHNOLOGIES, INC., a California
corporation,

13 Plaintiff,

14 vs.

15 ALAN STANLY, Prism Advanced Technologies,
Inc. and DOES 1-50, inclusive/

16 Defendants.
17
18

19 ALAN STANLY, an individually and as
representative of PRISM ADVANCED
20 TECHNOLOGIES, INC., a California
Corporation,

21 Cross-complainants,

22 vs.

23 FRANCIS LOPEZ, an individual; MARTIN
HUDACKO, an individual; PRISM ADVANCED
24 TECHNOLOGIES, INC., a California
corporation; and ROES 1-50, inclusive,

25 Defendants.
26
27
28

Case No.: GIN 029692

PROOF OF SERVICE

1 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2 I, Courtenay Harrold, declare:

3 I am employed in the County of San Diego, State of California. I am over the age of 18 and
4 not a party to the above-entitled action. My business address is 4660 La Jolla Village Drive, Suite
5 775, San Diego, CA 92122.

6 On September 1, I served:

- 7 1. NOTICE OF RULING
8 2. PROOF OF SERVICE

9 xx (BY MAIL): I caused each such envelope, with postage thereon fully prepaid, addressed to
10 the following, to be placed in the United States mail in San Diego, California. I am readily familiar
11 with this firm's business practice for collection and processing of correspondence for mailing with
12 the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S.
13 Postal Service this same day in the ordinary course of business (C.C.P. Section 10139a; 2015.5).

14 Joseph S. Fischbach, Esq.
15 Fischbach & Fischbach
16 9595 Wilshire Blvd., #410
17 Beverly Hills, CA 90212-2504

18 _____ (BY OVERNIGHT MAIL): I caused the above-described documents to be delivered via
19 overnight delivery, by placing a copy in a separate OVERNIGHT MAIL mailer and attached a
20 completed air bill, with Standard Overnight delivery requested, and caused said mailed to be
21 deposited in the overnight mail collection box at San Diego, California:

22 _____ (BY PERSONAL SERVICE): I caused each such envelope to be delivered by hand to the
23 addressee:

24 _____ (BY FACSIMILE): I caused such document to be served on all parties to this action via
25 facsimile at the numbers indicated on this service list (C.C.P. Section 1012.5):

26 xx (State): I declare under penalty of perjury under the laws of the State of California that the
27 above is true and correct

28 _____ (Federal): I declare that I am employed in the office of a member of the bar of this Court at
whose direction the service was made.

Executed on September 1, 2005 in San Diego, California.

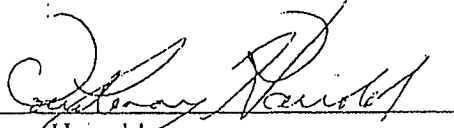

Courtenay Harrold

EXHIBIT 7

C381

Case 3:05-cv-02236-B-CAB Document 88 Filed 04/11/2007 Page 1 of 6

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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 ENTERPRISE TECHNOLOGY HOLDINGS)
13 INC.,)

14 Plaintiff,

15 v.

16 NOVEON SYSTEMS INC., ET AL.,

17 Defendants.
18
19
20

Civil No: 05-CV-2236-B(CAB)

ORDER (1) STRIKING
DEFENDANT NOVEON SYSTEMS
INC.'S ANSWER AND
COUNTERCLAIMS AND (2)
ENTERING DEFAULT
JUDGMENT AGAINST
DEFENDANT NOVEON SYSTEMS
INC.

21 I. INTRODUCTION

22 On December 8, 2006, the Magistrate Judge entered a Report and Recommendation,
23 which included recommendations to (1) strike Defendant Noveon System Inc.'s
24 ("Noveon") Answer and Counterclaims and (2) enter default judgment against Noveon.
25 (Doc. No. 50.)

26 Based on the Magistrate Judge's Report and Recommendation and the reasoning set
27 forth below, the Court hereby (1) STRIKES Noveon's Answer and Counterclaims and (2)
28

05-CV-2236-B (CAB)

1 ENTERS DEFAULT JUDGMENT against Noveon.

2
3 II. BACKGROUND

4 On December 8, 2005, Plaintiff Enterprise Technology Holdings, Inc. filed a
5 complaint against Noveon for copyright infringement, violation of the Lanham Act, unfair
6 competition, and injunctive relief. (Doc. No. 1.) On January 4, 2006, Noveon filed an
7 Answer and Counterclaims, seeking declaratory relief and asserting interference with
8 prospective economic advantage. (Doc. No. 3.)

9 In October 2006, Plaintiff's counsel contacted the Magistrate Judge to request a
10 discovery conference. (Doc. No. 50 at 2.) According to Plaintiff, Plaintiff had served
11 discovery requests on Noveon on August 2, 2006, but had received no response. (*Id.*) On
12 October 13, 2006, the Magistrate Judge held a telephonic discovery conference to resolve
13 the discovery dispute, at which Ronald Noya, attorney for Noveon at the time, indicated
14 that Noveon had not provided responses despite his repeated attempts to secure cooperation
15 from his client. (*Id.*) The Magistrate Judge then ordered that Noveon serve all outstanding
16 discovery responses no later than October 27, 2006, warning that failure to provide good
17 faith responses would result in sanctions. (Doc. No. 40 at 1.)

18 The Magistrate Judge held a status conference on October 30, 2006, to discuss the
19 status of the discovery responses, at which Plaintiff indicated that Noveon still had not
20 responded to the outstanding discovery requests. (Doc. No. 50 at 2.) Mr. Noya stated that
21 his client was still not responding to his attempts to make contact. (*Id.*) The Magistrate
22 Judge therefore found Noveon in violation of a court order and gave Plaintiff a deadline to
23 file a request for sanctions. (*Id.*) On November 6, 2006, Plaintiff filed a motion for
24 discovery sanctions, which included requests that Noveon's Answer and Counterclaims be
25 stricken and default judgment be entered against Noveon. (Doc. No. 41.) Noveon filed no
26 opposition to the motion.

27 On December 8, 2006, "[b]ased on the Court's knowledge of the history of this case
28

Case 3:05-cv-02236-B-CAB Document 88 Filed 04/11/2007 Page 3 of 6

1 and after reviewing the papers filed in support of the motion for sanctions," the Magistrate
2 Judge issued a Report and Recommendation, which in part recommended (1) striking
3 Noveon's Answer and Counterclaims and (2) entering default against Noveon. (Doc. No.
4 50 at 2.) The Magistrate Judge gave any party until December 22, 2006, to file any
5 objections to the Report and Recommendation. (*Id.* at 6.) No party has filed any
6 objections to the above two recommendations made by the Magistrate Judge.

8 III. DISCUSSION

9 A. STANDARD OF LAW

10 Under Federal Rule of Civil Procedure 37(b)(2)(C),

11 If a party or an officer, director, or managing agent of a party or a person
12 designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to
13 obey an order to provide or permit discovery, including an order made under
14 subdivision (a) of this rule or Rule 35, or if a party fails to obey an order
entered under Rule 26(f), the court in which the action is pending may make
such orders in regard to the failure as are just, and among others the
following:

15 [. . .] (C) An order **striking out pleadings** or parts thereof, or staying
16 further proceedings until the order is obeyed, or dismissing the action
or proceeding or any part thereof, or **rendering a judgment by**
17 **default** against the disobedient party[.]

18 FED. R. CIV. P. 37(b)(2)(C) (emphasis added). However, the Ninth Circuit has "narrowed"
19 the discretion of a district court in imposing the "drastic" sanction of dismissal or default
20 and found that "the losing party's noncompliance must be due to willfulness, fault, or bad
21 faith." *Computer Task Group, Inc. v. Brotby*, 364 F.3d 1112, 1115 (9th Cir. 2004).
22 "Disobedient conduct not shown to be outside the litigant's control meets this standard."
23 *Fair Housing of Marin v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002).

24 In deciding whether a sanction of dismissal or default for noncompliance with
25 discovery is appropriate, the Ninth Circuit has held that a district court must weigh five
26 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need
27 to manage its docket; (3) the risk of prejudice to the [opposing party]; (4) the public policy

Case 3:05-cv-02236-B-CAB Document 88 Filed 04/11/2007 Page 4 of 6

1 favoring disposition of cases on their merits; and (5) the availability of less drastic
2 sanctions." Id. (internal quotations omitted). "Where a court order is violated, the first and
3 second factors will favor sanctions and the fourth will cut against them." Computer Task
4 Group, 364 F.3d at 1115. The element of prejudice (i.e., the threat of "interfer[ence] with
5 the rightful decision of the case") is "essential," and "[d]elay alone, without a focus on its
6 effects, will not justify dismissal or default." Wanderer v. Johnston, 910 F.2d 652, 656 (9th
7 Cir. 1990).

8 **B. ANALYSIS**

9 **1. Entering Default Judgment Against Noveon**

10 Despite being given several months to comply with discovery requests and being
11 compelled to do so by order of the Magistrate Judge, Noveon has failed to produce any
12 requested documents, answers to interrogatories, or responses to requests for admissions.
13 Noveon has not made any indication that it intends to respond to discovery requests in the
14 future and was completely unresponsive to its attorney Mr. Noya, who has since withdrawn
15 as Noveon's counsel, indicating to the Court that Noveon has apparently become insolvent
16 and defunct. (Doc. No. 44, 57.) Furthermore, Noveon filed no opposition to Plaintiff's
17 motion for discovery sanctions and filed no objections to the Magistrate Judge's December
18 8, 2006, Report and Recommendations before this Court. Accordingly, the Court **FINDS**
19 that Noveon's non-compliance with the Magistrate Judge's October 13, 2006, order was
20 willful.

21 In consideration of the five factors set forth by the Ninth Circuit in considering
22 entrance of default judgment, the Court **FINDS** granting default judgment against Noveon
23 to be in the best interest of the public and the Court by expediting the present action in the
24 face of Noveon's non-compliance with discovery. Furthermore, the Court **FINDS** that
25 default judgment would not risk prejudice against Noveon, since Noveon has had ample
26 opportunity to respond to Plaintiff's discovery requests under threat of sanctions and to file
27 objections to the Magistrate Judge's recommendations, but has chosen instead to cease

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1 participating in the present action. The Court also **FINDS** that default judgment would not
2 hinder the public policy favoring disposition of cases on the merits, as Noveon's non-
3 compliance with discovery requests makes resolution of this action on the merits difficult,
4 if not impossible. Moreover, the Court already found sufficient grounds to grant Plaintiff a
5 preliminary injunction against Noveon on May 12, 2006, on the basis that Plaintiff had a
6 "probability of prevailing" on its claims and that Plaintiff would suffer irreparable injury
7 and harm if preliminary injunctive relief was not granted. (Doc. No. 35.) While lesser
8 sanctions could be imposed by the Court, the Court **FINDS** that such sanctions would
9 likely be futile, as Noveon has apparently become insolvent and defunct and has ceased to
10 participate in this litigation.

11 Therefore, under Rule 37(b)(2)(C), the Court hereby **ENTERS DEFAULT**
12 **JUDGMENT** against Defendant Noveon.

13 **2. Striking Answer and Counterclaims**

14 In United States v. Kahalu Constr. Co., Inc., 857 F.2d 600 (9th Cir. 1988), the
15 Ninth Circuit upheld the district court's dismissal of Defendant's counterclaim under Rule
16 37(b)(2)(C), finding "the failure to provide discovery relating to Kahalu's counterclaim
17 was appropriately sanctioned by dismissal of the counterclaim." *Id.* at 602. Here, Noveon
18 filed counterclaims against Plaintiff seeking declaratory relief and asserting interference
19 with prospective economic advantage. (Doc. No. 3.) Noveon failed to provide Plaintiff's
20 requested discovery related to Noveon's corporate structure, customers, employment and
21 licensing agreements, and software technology at issue in the present action. (Doc. No. 41,
22 Dillon Decl. at 3 - 11.) The Court **FINDS** that this requested discovery directly relates to
23 Noveon's counterclaims. For this reason, along with the consideration of the five factors
24 discussed above, the Court hereby **STRIKES** Noveon's Answer and Counterclaims under
25 Rule 37(b)(2)(C).


26
27 **IV. CONCLUSION**

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1 Based on the Magistrate Judge's December 8, 2006, Report and Recommendation
2 and the reasoning set forth above, the Court hereby (1) **STRIKES** Noveon's Answer and
3 Counterclaims and (2) **ENTER DEFAULT JUDGMENT** against Noveon.

4
5
6 **IT IS SO ORDERED**

7
8 DATED: April 11, 2007

9
10 
11 Hon. Rudi M. Brewster
United States Senior District Court Judge

12 cc: Hon. Catherine Ann Bencivengo
13 United States Magistrate Judge

14 All Counsel of Record
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Attorneys for Petitioning Creditors

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In Re:

FRANCIS J. LOPEZ,
Alleged Debtor.

Case No. 05-05926-PBINV

Involuntary Chapter 7

PROOF OF SERVICE

Judge: The Honorable Peter W. Bowie
Ctm: 4

I, the undersigned, declare that I am over the age of eighteen years and not a party to this cause. I am employed in, or am a resident of, the County of San Diego, California, and my business address is: 402 West Broadway, Suite 1210, San Diego, California.

On the date shown below, I caused to be served the following document(s):

1. DECLARATION OF L. SCOTT KEEHN: (1) SUMMARIZING CURRENT STATUS, AND (2) RENEWING REQUEST FOR AN ENFORCEMENT ORDER IMPOSING MONETARY SANCTIONS (\$4,442.00) AGAINST ALLEGED DEBTOR FRANCIS J. LOPEZ
2. DECLARATION OF TIMOTHY P. DILLON
3. COMPENDIUM OF EXHIBITS IN SUPPORT OF RENEWED REQUEST FOR AN ENFORCEMENT ORDER IMPOSING MONETARY SANCTIONS AGAINST ALLEGED DEBTOR FRANCIS J. LOPEZ

KEEHN & ASSOCIATES, APC
ATTORNEYS AND COUNSELORS AT LAW
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TELEPHONE (619) 400-2200 · FACSIMILE (619) 400-2201

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1 [] BY PERSONAL SERVICE: I placed a true copy of the above document(s) in a sealed
2 envelope clearly labeled to identify the attorney for the party being served, and personally
3 caused said such envelope to be personally delivered on each addressee named hereafter:
4 [] BY FACSIMILE AND MAIL: I declare that upon the prior agreement of the party being
5 served, I served the above named documents by facsimile transmission during usual office
6 hours from facsimile number 619-400-2201, to a facsimile machine maintained by the person
7 on whom it is served and that the transmission was reported as complete and without error.
8 Thereafter, I mailed (by first-class mail, postage prepaid) a true copy to each addressee
9 named hereafter:

10 [✓] BY MAIL: I declare that I am readily familiar with the business practice for collection and
11 processing of correspondence for mailing with the United States Postal Service, that the
12 correspondence shall be deposited with the United States Postal Service this same day in the
13 ordinary course of business; and that a true copy was placed in a separate envelope, with
14 postage thereon fully prepaid for each addressee named hereafter:

15 M. Jonathan Hayes
16 Law Office of M. Jonathan Hayes
21800 Oxnard Street, Suite 840
Woodland Hills, CA 91367

17 [✓] BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a true copy of the above-
18 named document(s) to be sent to the person(s) at the e-mail addresses listed below. I did not
19 receive, within a reasonable time after the transmission, any electronic message or other
20 indication that the transmission was unsuccessful:

21 jhayes@polarisnet.net

22 I declare under penalty of perjury under the laws of the United States that the foregoing is
23 true and correct.

24 Executed on September 27, 2007.

25 
26 JEANINE M. BOURCIER
27
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